

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 166.

THE AETNA LIFE INSURANCE COMPANY, PLAINTIFF,
v.
ERROR.

PATRICK F. TREMBLAY.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF
MAINE.

FILED NOVEMBER 29, 1911.

(21,915.)

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extent of such interest as they might have when said policy should become a claim.

And the plaintiff avers that due notice of said assignments was thereupon duly sent to said defendant, and by it received, accepted and approved.

And the plaintiff avers that the said Jean O. Tremblay died on the twenty-first day of January, A. D. 1901; that thereupon, within one year from the day of said death, due and sufficient proof thereof, as required by said contract of insurance, was forwarded to said defendant; and that any further or other proof of the death of said Jean O. Tremblay was then and there waived by said defendant.

Whereby and by reason of the premises, an action hath accrued to the plaintiff to demand and have of the said defendant the said sum of two thousand dollars; yet the said defendant, though often requested, has not paid said sum, but neglects and refuses so to do.

Also, for that the said defendant, at said Auburn, on the day of the purchase of this writ, was indebted to the plaintiff in the sum of three thousand dollars, for goods then bargained and sold by the plaintiff to the said defendant, at its request; and for work then done and materials furnished by the plaintiff for the said defendant, at its request; and for money then loaned by the plaintiff to the said defendant, at its request; and for money then paid by the plaintiff for the use of the said defendant, at its request; and for money then received by the said defendant for the use of the plaintiff, at its request; and for money found to be due from the said defendant to the plaintiff upon an account then stated between them.

Whereby an action hath accrued to the plaintiff to demand and recover of the said defendant said sum; yet though requested, the said defendant has never paid the same, but wholly neglects so to do.

5 Under this count the plaintiff will claim to prove that said defendant, on the thirteenth day of August, A. D. 1885, issued its policy of insurance to one Jean O. Tremblay, upon the life of the said Jean O. Tremblay, for the sum of two thousand dollars, payable upon the death of the said Jean O. Tremblay to Arthemise D. Tremblay, the wife of said Jean O. Tremblay, which said policy was thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, assigned in writing by said Jean O. Tremblay and Arthemise D. Tremblay to the plaintiff, for valuable consideration, copies of which assignments are filed in court with this writ; and that thereafterwards, to wit, on the twenty-first day of January, A. D. 1901, said Jean O. Tremblay died, while said policy was in full force; and that said defendant received due notice of said assignment and of the death of said insured, and waived any further or other notice thereof.

To the damage of the plaintiff (as he says), the sum of four thousand dollars.

Writ dated May 22, 1901.

Plea general issue.

Law on Report.

Counsel for plaintiff introduces the following documentary evidence:

Policy dated August 13, 1885, marked "Pl'ff Ex. A."

Assignment of Policy, produced by the defendant, from J. O. Tremblay and Arthemise D. Tremblay to P. F. Tremblay; marked "Pl'ff Ex. B."

Assignment from J. O. Tremblay and Arthemise D. Tremblay to P. F. Tremblay, marked "Pl'ff Ex. C."

Letter from The Aetna Life Insurance Co. to P. F. Tremblay, dated January 19, 1901, marked "Pl'ff Ex. D."

It is admitted that there was due on Policy No. 149,296, issued by The Aetna Life Insurance Co. on the life of J. O. Tremblay, the sum of \$1959.49 at the time of his death on January 21, 1901, payable in ninety days after satisfactory proofs of death.

It is admitted that the Aetna Life Insurance Co. has received satisfactory proofs of death.

Defense.

Counsel for defendant introduces the following documentary evidence, subject to objection:

Memorandum of Agreements and Admissions; marked "Deft. Ex. 1."

Notarial Act for \$541, dated August 16, 1889; marked "Deft. Ex. 2."

Assignment of Policy to J. B. Cloutier; marked "Deft. Ex. 3."

Affidavit and Account of J. B. Cloutier; marked "Deft. Ex. 4."

Affidavit of P. F. Tremblay; marked "Deft. Ex. 5."

Affidavit of A. D. Tremblay; marked "Deft. Ex. 6."

Receipt, Judicial Deposit; marked "Deft. Ex. 7."

Notices, Judicial Deposit; marked "Deft. Ex. 8."

Declaration in the suit of J. B. Cloutier; marked "Deft. Ex. 9."

Order of notice and default in same suit; marked "Deft. Ex. 10."

Proofs in same suit; marked "Deft. Ex. 11."

Judgment in same suit; marked "Deft. Ex. 12."

Order for \$25.00, given by J. O. Tremblay acting by A. D. Tremblay; marked "Deft. Ex. 13."

Letter of A. D. Tremblay; marked "Deft. Ex. 14."

Deposition of J. B. Cloutier.

7 *Deposition of J. B. Cloutier.*

Interrogatory 1. What is your name, age, residence and occupation?

Answer. Jean B. Cloutier, 70 years, late professor at the Laval Normal School of Quebec.

Interrogatory 2. Did you know Jean Ovide Tremblay the person

mentioned as the insured in policy No. 149,296 issued by the Ætina Life Insurance Company, in his lifetime? If so, how long had you known him at the time of his death?

Answer. I did know Jean Ovide Tremblay the person mentioned as the insured in policy No. 149,296 issued by the Ætina Life Insurance Company in his lifetime. I had known him 13 years at the time of his death.

Interrogatory 3. Do you know his wife, Artemise D. Tremblay? If so, how long have you known her?

Answer. I do know his wife Artemise D. Tremblay. I got acquainted with her two or three months before I ever knew her husband.

Interrogatory 4. Explain fully the transaction referred to in item No. 1 of your account filed with your affidavit as assignee in the proof of death of Jean O. Tremblay, as follows: "1889. March 19, Deficit on bill No. 3, paid by me to the Government: \$54.89?"

Answer. This item is the balance due on three advances made by me on drafts drawn by Jean O. Tremblay on the Commissioner of Crown Lands of this Province of Quebec, in payment of commissions to become due to him on future collections of price of sale of Crown Lands or other Crown dues. These drafts being accepted (conditionally) by the commissioner, I discounted them and paid the proceeds to the Department in discharge (à l'acquit) of Tremblay. The details of this item are as follows:

| | | | |
|-------------------------|--------------------------------|----------|----------------|
| 1888. | | | |
| May 28 | To loan No. 1..... | \$125.00 | |
| Sept. 26 | " " " 2..... | 125.00 | |
| 1889. | | | |
| Feb. 26 | " " " 3..... | 120.00 | |
| | | | <hr/> \$370.00 |
| 8 | | | |
| 1888. | | Cr. | |
| 27 June | By cash or check received from | | |
| | the Dept. of Crown Lands..... | \$15.38 | |
| 26 Sep. | do. do. | 17.84 | |
| 4 Dec. | do. do. | 58.93 | |
| 1889. | | | |
| Feb. | do. do. | 91.80 | |
| 22 July | do. do. | 4.25 | |
| 17 Sep. | do. do. | 45.07 | |
| 1891. | | | |
| 19 March | do. do. | 97.22 | |
| | | | <hr/> \$315.11 |
| Leaving balance of..... | | | <hr/> \$54.89 |

Interrogatory 5. What, if any, connection has this transaction with the transaction of \$54.89 on March 19th, 1890, mentioned in Paragraph 8 of the "Bref d'Assignation et déclaration" in the

suit of J. B. Cloutier vs. The Heirs of J. O. Tremblay et als. No. 1070 in the Superior Court for the District of Quebec?

Answer. The transaction referred to in answer to interrogatory 4 is the same as that of \$54.89 mentioned in paragraph 8 of the "Bref d'assignation et déclaration" in the suit of J. B. Cloutier vs. the Heirs of J. O. Tremblay & als. No. 1070 in the Superior Court for the District of Quebec.

Interrogatory 6. What, if any, conversation or conversations have you ever had with Jean O. Tremblay or his wife, Artemise D. Tremblay, relating to this item, and in particular relating to its connection with said Policy No. 149,296? Give dates of conversation as near as possible.

Answer. I cannot specify the dates, but I can say that I had, previous to July 1890, more than one conversation with Mrs. Artemise D. Tremblay in relation to this last as well as to other items of my account; and, as attorney of her husband and as beneficiary named in the policy above referred to in answer to interrogatory 2, she repeatedly agreed that any advance made by me as above stated in answer to interrogatory 4, to the Crown Lands Department, would be secured by said policy of insurance. I never had any such conversation with Jean O. Tremblay himself.

Interrogatory 7. Explain fully the transaction referred to in item No. 4 of your account filed with your affidavit as assignee in the proof of death of J. O. Tremblay as follows: "1890, June 16th, Deficit on bill No. 4 paid by me to the Government, \$76.00?"

9 Answer. This sum of \$76.00 is part of \$200 which was advanced and paid to the Crown Lands Department at the request of H. A. Tremblay, the son of the late Jean O. Tremblay, on commissions to be earned by him for collection of Crown dues; the draft is dated 27th May, 1890. Out of the \$200 advanced I have claimed but \$76.00, for the reason that at the time of his dismissal as Government employee, H. A. Tremblay was only entitled to the latter sum. By claiming this last sum only I have, without in any way being compelled to do so, reduced my legitimate claim of \$200 to \$76.00.

Interrogatory 8. What, if any, conversation or conversations have you ever had with Jean O. Tremblay or his wife, Artemise D. Tremblay relating to this item and in particular relating to its connection with said Policy No. 149,296? Give dates of conversation as near as possible.

Answer. As my answer to this I refer you to that given to interrogatory 6.

Interrogatory 9. Explain fully the transaction referred to in item No. 5 of your account filed with your affidavit as assignee in the proof of death of J. O. Tremblay, as follows: "1890 April 30th, Loan to H. A. Tremblay to pay his dues to the Government, \$100.00."

Answer. On that day, 30th April, 1890, H. A. Tremblay, who had lately been substituted to his father as Crown Lands Agent on condition that he would pay all his father's debts, came to me and requested of me \$100.00 to help him to refund to the Government

moneys he or his father had collected, and which had been employed for their own private use.

Interrogatory 10. What, if any, conversation or conversations have you ever had with Jean O. Tremblay or his wife, Artemise D. Tremblay, relating to this item and in particular relating to its connection with said Policy No. 149,296? Give dates of conversation as near as possible?

Answer. As my answer to this I beg to refer to the answer given to interrogatory 6.

Interrogatory 11. Explain fully the transaction referred to in item No. 6 of your account filed with your affidavit as assignee in the proof of death of J. O. Tremblay as follows: "1891, Oct. 27th, Money loaned to Mrs. J. O. Tremblay, \$25.00."

Answer. The item referred to in this interrogatory should say 27th November instead of 27th October. I will answer as though your question had the date of 27th November 1891, instead of 27th 10 October 1891. This sum of \$25.00 was loaned to Mrs. Tremblay as attorney of her husband as per note dated 27th November 1891. She wanted the funds to pay her traveling expenses to Lewiston where her husband was then residing. This information I got from Mr. Gaboury, President of the Quebec Permanent Building Society.

Interrogatory 12. What, if any, conversation or conversations have you ever had with Jean O. Tremblay or his wife, Artemise D. Tremblay relating to this item and in particular relating to its connection with said Policy No. 149,296? Give dates of conversation as near as possible.

Answer. I had no conversation with Jean O. Tremblay nor with his wife Artemise D. Tremblay relating to this item.

Interrogatory 13. What, if any, payments were made to you during the lifetime of Jean O. Tremblay on account of the loan of August 16th, 1889, of \$541.00, or of the premiums paid by you on said Policy No. 149,296, or of the above amounts of \$54.89, \$76.00, \$100, and \$25.00?

Answer. I have received no payment on account of the sum of \$541.00 or of the premiums paid by me on said policy No. 149,296, or on account of the above amounts of \$54.89, \$76.00, \$100, and \$25.00.

Interrogatory 14. Have the above transaction, i. e. the transaction of 541.00, the premiums paid by you, and the transactions of \$54.89, \$76.00, \$100.00 and \$25.00 any connection with any prior transactions between you and the said Jean O., and Artemise D. Tremblay or with either of them? If so, state the facts.

Answer. The above transaction, i. e. the transaction of \$541.00, the premiums paid by me, and the transactions of \$54.89, \$76.00, \$100.00, and \$25.00 have no connection whatever with any prior transactions between me and the said Jean O. and Artemise D. Tremblay or with either of them.

Interrogatory 15. State if you know when the said Jean O. Tremblay severed his connection with the Government as Crown Land Agent?

Answer. As far as I can remember it was in the fall of 1889.

Interrogatory 16. State if you know when his son H. A. Tremblay severed his connection with the Government as Crown Land Agent?

Answer. It was in the summer of 1891.

It is agreed that the defendant may, if it wishes, furnish before the case is printed a copy of the statute or statutes under which the order of notice was published in the Cloutier suit.

It is further agreed that the defendant may print as a part 11 of the case such portions of the statutes of Quebec, Articles 1102 to 1205, inclusive, as relates to Judicial Deposits

It is further agreed that any and all of the above evidence, if admissible at all, may, for the purposes of this case, be deemed admissible under the general issue.

Counsel for plaintiff offers in rebuttal the following evidence:

Contract between J. B. Cloutier and J. O. Tremblay, dated August 31, 1888; marked "Pl'ff Ex. E."

Statement of payments by the Permanent Construction Society of Quebec to Mr. J. B. Cloutier; marked "Pl'ff Ex. F."

Extract from the great book of the Crown Lands, in the matter of J. O. Tremblay and J. B. Cloutier; marked "Pl'ff Ex. G."

STANLEY TREMBLAY, called by the plaintiff, testified:

Q. Are you the son of J. O. Tremblay?

A. Yes sir.

Q. And a brother to this plaintiff?

A. Yes sir.

Q. In the early part of 1901 did you have a conversation with J. B. Cloutier?

A. Yes sir.

Q. At that time did he give you a statement of what he claimed as his account against your father?

A. Yes sir, he did.

Q. I show you "Pl'ff Ex. II," and ask you if that is the account?

A. Yes, that is the account I had from Mr. Cloutier.

Statement marked "Pl'ff Ex. II." put in evidence. (Objected to.)

Q. Did Mr. Cloutier make any statement to you as to this account and if so what?

A. No, he said that is all the amount there was due; he said "I explained to your brother all about it," and he said "You can take this account so it will be more satisfactory."

12 MRS. ARTHEMISE D. TREMBLAY, called by the plaintiff, testified:

Q. You are the widow of Mr. J. O. Tremblay?

A. Yes sir.

Q. Where was your home at the time of your husband's death?

A. Chicoutimi.

Q. How far is that from Quebec?

A. 180 miles.

Q. What was your husband's business?

A. Surveyor and agent for the Crown Lands.

Q. What pay did he get for his work as government officer?

A. \$800 and \$200 in commissions.

Q. The commission was at what rate on what?

A. 10 per cent on moneys received for the sale of government lands.

Q. Was the money for the price of the government lands paid to him?

A. Yes sir.

Q. And his commissions were ten per cent of such sums as might be paid him in this way?

A. Yes sir.

Q. Was there any limit to the amount of commissions in a single year, and if so what?

A. Yes sir, he was not to receive over \$200 in commissions.

Q. Was your husband personally present when any contracts were made in the latter part of his life, with Mr. Cloutier?

A. My husband wasn't present; I was authorized to act for him.

Q. The business with Mr. Cloutier was done through you entirely?

A. By myself.

Q. Do you remember the contract of August 31, 1888?

A. What is the name of the notary and how much is the amount?

Q. It is the \$479 contract?

13 A. Yes, I remember.

Q. Was there anything left due to Mr. Cloutier at that time beside the amount of \$479 which was stated in that contract?

A. There was something due him before the contract; we talked of small sums due previously and made all of them in one amount and with the money I borrowed made that four hundred and some odd dollars.

Q. That was understood then to be a settlement up to that time?

A. Yes sir.

Q. I show you a memorandum marked "Pl'ff Ex. G." showing three orders of \$125 each upon the government, to J. B. Cloutier and one order of \$200, and ask you if in the first place you know about them?

A. I don't remember, I never borrowed any such sum.

Q. Did you borrow any such sums from Mr. Cloutier?

A. No sir.

Q. Did you borrow for your husband any sums of money up to 1891 except such as were covered by notarial agreements?

A. I borrowed \$25.

Q. Was that before or after the 1st of January, 1891; Isn't that an item of October 27, 1891?

A. That is right; \$25.

Q. Did your husband, or you for him, borrow any money from J. B. Cloutier in any other way except as under the notarial agreements?

A. No sir.

Q. Coming now to the contract of August 16, 1889, for \$541 do you remember that contract?

A. Yes, I remember.

Q. How much money was actually borrowed at that time?

A. \$400.

Q. What was the balance of the sum; how was that made up?

A. Interest at 8 per cent and a \$20 bonus and \$10 for the notary.

14 Q. On what was the interest reckoned if you know?

A. On \$400.

Q. To cover what time if you know?

A. For two years, as much as I can remember.

Q. Were payments on that contract to commence before the two years?

A. He gave him orders on the government before the two years were up.

Q. By the contract you understood that the payments were to commence about two years later?

A. Yes, it was to pay sooner.

Q. What do you mean by interest; was the interest to cover the time between the date of the contract and the time when you were to commence to make the payments?

A. Until the two years had expired.

Q. Who, if anybody, when these contracts were made was present representing or acting for Mr. Cloutier?

A. The notary and Mr. Cloutier and myself.

Q. Was Mr. Gaborier the notary?

A. No sir.

Q. Was he present with Mr. Cloutier at any of the arrangements when the contracts were made?

A. Before I borrowed the money I asked Mr. Gaborier to see if I could get the money.

Q. What money is that?

A. The \$400.

Q. What else did Mr. Gaborier have to do with it if anything?

A. Each time I borrowed the money I always saw Mr. Gaborier first as I considered him his agent.

Q. As whose agent?

A. Mr. Cloutier's.

Q. Who was Mr. Gaborier and what was his business?

A. He was president of the building society.

Q. The Permanent Construction Society of Quebec?

A. Yes sir.

15 Q. Did he act for Mr. Cloutier between you and Mr. Cloutier in matters of the Company?

A. I thought he was his agent.

Q. Did you make any of your arrangements with Mr. Cloutier in regard to matters of the building society through Mr. Gaborier?

A. I had borrowed money from the construction company through Mr. Gaborier who was its president.

Q. Did you make any arrangements with Mr. Cloutier about your money matters, about your insurance or any of the matters connected

with the construction society, through Mr. Gaborier; did Mr. Gaborier do any of the business between you and Mr. Cloutier?

A. The Construction Company had the policy as collateral security.

Q. Did you make any of your financial arrangements in connection with the construction company with Mr. Cloutier through Mr. Gaborier?

A. Yes sir, certainly.

Q. Did your husband own any real estate which was mortgaged to the society?

A. Yes sir.

Q. What finally became of the property?

A. We gave orders to the construction company who had a mortgage on it to sell it.

Q. To whom?

A. Mr. Gaborier told me that Mr. Cloutier wanted to buy it.

Q. What arrangements were made about it?

A. When I left Chicoutimi I was offered \$1200 for the property, and I told Mr. Gaborier not to sell it for less than that amount.

Q. Did you finally make arrangements for him to sell it to any particular person?

A. No, not particularly, but I had told him that I wanted to sell it and Mr. Cloutier told me not to sell for less than \$1200.

16 Q. What was finally done with it?

A. It was sold to Mr. Cloutier for the amount due the construction company, but it was understood that he would give us the surplus of the money due.

Q. How much was the amount due the construction company?

A. Nine hundred and sixty and some odd dollars, I don't remember.

Q. \$967.00?

A. I don't remember very well about that.

Q. What was Mr. Cloutier to do with the balance of the \$1200 above the \$967?

A. Mr. Gaborier told me he was to pay me that money surplus.

Q. Pay you for yourself or your husband?

A. My husband.

Q. Was any arrangements made about this \$233 in connection with the payment of premiums and if so what?

A. No, I don't remember.

Q. Was any arrangement made by which Mr. Cloutier should hold the money and if so what?

A. If arrangements were made they were made with Mr. Gaborier.

Q. Have you ever had any talk with Mr. Cloutier since that time about this house business?

A. I spoke to him about it and he told me my husband was in debt and he kept that as a guaranty.

Q. When was that?

A. In the month of December, last year.

Q. December 1901 or 1900?

A. Last winter, 1901.

Q. Your husband died in January, 1901?

A. Yes, sir; it must be 1900.

Q. Have you ever had any other talk with Mr. Cloutier about that?

17 A. I went to his house in August and he would not receive me, saying that he didn't owe anything.

Q. That was last August?

A. Yes sir.

Q. Did Mr. Cloutier afterwards sell this property if you know?

A. Yes sir.

Q. Do you know to whom he sold it?

A. To Mr. Bailly. William Bailly.

Q. Do you know anything about a person named Coloza, mentioned in this bill I show you marked "Pl'ff Ex. H"?

A. Yes, I know Mr. Coloza.

Q. Did he have anything to do with that property?

A. Not with us; I didn't know.

Q. Did he have anything to do with it any way?

A. I don't know anything in any way.

Q. What do you understand about that item of \$44 which Mr. Cloutier claims against your husband's estate; what is it for?

A. I don't know anything about it; I never had anything to do with Mr. Coloza.

Q. Did it have anything to do with the house business and if so what?

A. No, never.

Q. Do you know anything about that item at all?

A. No sir.

Q. Do you know those two last names there?

A. I do not know them.

Q. In August 1901 when you tried to talk with Mr. Cloutier did you say anything to him about Mr. Gaborier and if so what?

A. I had seen Mr. Gaborier and asked him to see Mr. Cloutier.

Q. You had a talk with Mr. Cloutier in August, 1901?

A. Certainly.

Q. At that time did you say anything to him about Mr. Gaborier?

A. I don't think so.

18 Cross-examination:

Q. Your husband borrowed considerable money from time to time, did he not?

A. Yes sir.

Q. What was the occasion of his borrowing money?

A. To pay debts and our business.

Q. And wasn't your husband during the last ten years of his life financially embarrassed?

A. No sir.

Q. He borrowed large sums from Mr. Cloutier?

A. We borrowed.

Q. And he borrowed large sums from the Quebec Building Association?

A. Yes, we borrowed from the Construction Company.

Q. And you were obliged to sell your house on account of the mortgage which the Quebec Society had on it?

A. No, the company did not press for that.

Q. The house was mortgaged for nearly what it is worth?

A. For two thirds.

Q. Did you and your husband borrow from other sources?

A. No sir.

Q. On August 31, 1888, when you executed this notarial act of \$479 in behalf of your husband, you owed, or he owed, to Mr. Cloutier that amount?

A. No, we owed him several small loans and I borrowed another amount and we got the whole amount together and that made the sum of \$479.

Q. When was this sum of \$479 paid?

A. From that date we began to pay by the government and the construction company.

Q. When was the payment of this \$479 completed?

A. I don't remember; I had given them orders on the government and as I thought him honest I did not ask him when it was through, when it was paid.

Q. Were you more than two years paying this \$479?

19 A. I don't think so.

Q. You don't know when you made the last payment?

A. No, I don't remember.

Q. On August, 1889, you executed on behalf of your husband a notarial act to J. B. Cloutier to the amount of \$541?

A. Yes sir.

Q. That was to be paid at the rate of \$25 per month?

A. Yes sir.

Q. The first payment was to be made January, 1891?

A. I understood that if I could——

Q. The question is "Yes" or "No." The first payment was to be made January, 1891?

A. Yes sir, I remember.

Q. Do you know of your own knowledge whether your husband borrowed from Mr. Cloutier between August 31, 1888, and August 16, 1889, any other sums of money?

A. He did not borrow any.

Q. How do you know?

A. Because I always made the business with him and always borrowed the money.

Q. May 28, 1888, there was a transaction between your husband and Mr. Cloutier for \$125; what was it?

A. That was settled in the first act that you have in hand; it was all put together.

Q. What was the transaction?

A. I don't remember now.

Q. On September 29, that same year, which was after the first notarial act, there was a transaction of \$125; what was that?

A. We never borrowed that.

Q. What was the transaction?

A. I don't know.

Q. I show you this on the paper?

A. I can not know it, I did not make any.

Q. I show you the paper marked "Pl'ff Ex. G.," and ask you what that \$125 transaction was?

20 A. I think that was before the notarial act.

Q. No, it was after?

A. Sometimes I made those transfers to pay what I owed. All the transfers that were made were made to pay for what I owed on the two notarial acts.

Q. Can you explain this particular transaction?

A. All these transfers were made in payment of money due by notarial acts to Mr. Cloutier.

Q. Is the answer the same in regard to the next transaction of February, 1889, \$125?

A. Yes sir, all the transfers that are here were made in payment of money due on notarial acts.

Q. When you executed this notarial act of \$541, August 16, 1889, you understood, did you not, that that contained an agreement to assign an insurance policy to Mr. Cloutier as soon as the Quebec society had given up its claim on the policy?

A. I was to transfer it to him as collateral security.

Q. You understood you were to make an assignment, your husband or both of you?

A. I didn't sign for myself, I signed for my husband.

Q. Signed what?

A. This notarial act.

Q. Did you know at the time the assignment was made to Mr. Cloutier that the assignment was made?

A. The Construction Company was to make the transfer.

Q. Did you know at the time the assignment was made to Mr. Cloutier that the assignment was made?

A. I don't remember at the time it was made but I had given orders to the construction company to make the assignment and turn it over to them and put it in his hands.

Q. The policy?

A. Yes, to give him the policy.

Q. And did you understand from that time until your husband's death that Mr. Cloutier had an assignment of this policy?

21 A. I knew he had it in his hands; I didn't know whether he had a transfer or not; I knew the company had given it to him.

Q. Did you say you called on Mr. Cloutier in August last year?

A. Yes sir.

Q. What did you ask him?

A. I went to see him in relation to the house.

Q. How much did your husband owe your son P. F. Tremblay at the time the assignment to him was made a few days before your husband's death?

A. We assigned it to him but we did not owe him.

Q. You did not owe him anything?

A. No sir.

Q. The item on Mr. Cloutier's account, "Plff Ex. H," March 19, 1889, deposited on bill No. 3, paid by me to the government \$54.89; do you know anything about that?

A. I do not know anything about it.

Q. What do you know about the item on this same bill, June 16, 1890, deposited on bill No. 4, paid by me to the government \$76?

A. I don't know anything about it.

Q. What do you say about the item of April 30, money paid to H. A. Tremblay to pay his debts to the government \$100?

A. I don't know anything about it.

Q. What do you say about the item of October 27, 1891, money paid to Mr. J. O. Tremblay, \$25?

A. That is correct, I had \$25.

Q. Did you understand that whatever you or your husband or your son H. A. Tremblay owed to Mr. Cloutier at the time of your husband's death, was covered by and guaranteed by this assignment of this policy to Mr. Cloutier?

A. No, it was understood that it was not to guarantee Mr. H. A. Tremblay's debts.

Q. When did your husband cease to act as crown land agent?

A. I don't remember.

Q. Was it in the fall of 1889?

A. I don't remember.

Q. About eleven or twelve years before he died?

22 A. It was February, 1890, that he severed his connection with the crown land office.

Q. At that same time your son was appointed?

A. Yes sir.

Q. How long did your son H. A. Tremblay continue to act as crown land agent?

A. About three years and six months, I don't remember very well.

Q. Did you last spring see in the newspapers a notice of a suit brought by J. B. Cloutier to obtain this insurance money?

A. Yes sir.

Q. When did you see it?

A. In the month of April.

Q. Did you send a copy of the notice or a copy of the paper to your son P. F. Tremblay?

A. Yes sir.

Q. When did you send him that?

A. About the same time, in the month of April.

Q. Did you mail it to him?

A. Yes sir, I sent a letter in which I put the notice.

Q. Did he answer the letter.

A. No he did not answer.

Q. Why didn't you appear in answer to that suit in court?

A. Because I had no business there.

Q. I show you "Deft. Ex. 15." Is that the notice you sent your son P. F. Tremblay?

A. Yes sir.

Q. That is the identical paper is it?

A. Yes sir.

Q. You cut that out of the newspaper yourself?

A. Yes sir.

Q. And you mailed it to him in April?

A. Yes sir.

Q. You knew his address at that time?

A. Yes sir.

23 (Notice marked "Deft. Ex. 15," put in evidence.)

Direct resumed:

Q. In reference to payments made by your son P. F. Tremblay, and before the assignment was given to him in 1901, had he made payments for you and by your request for various things, furniture and other things and paid up bills of your other sons?

A. Yes, I didn't remember it.

Q. To a considerable amount?

A. To about \$200.

Q. And before had he paid at your request some sums of money for his brother who was pursuing his studies?

A. Yes sir.

Q. When he was here in Lewiston, Stanley?

A. I know he has paid some money for him.

Q. Did you write to him to do so?

A. Certainly I did.

P. F. TREMBLAY, the plaintiff, testified:

Q. Are you the plaintiff in this case?

A. Yes sir.

Q. I wish to call your attention to the time when you called upon Mr. Cloutier about a year ago; do you recollect that time?

A. Yes sir.

Q. Where did you call upon him?

A. I called at his home.

Q. Who was with him?

A. Notary Dumais.

Q. A relation of yours?

A. Yes, my mother's cousin.

Q. By whose request did you call upon Mr. Cloutier?

A. By my father's request.

Q. And for what purpose?

A. My father asked me to see Cloutier and get a settlement of the final account with him.

24 Q. Did you know Cloutier previous to that?

A. No sir.

Q. Tell what you recollect of the conversation that occurred as you recollect it?

A. I came in with Mr. Dumais and Mr. Dumais introduced me as being the son of J. O. Tremblay of whom he had spoken a year

ago, and he said you told me that Mr. Tremblay could see his father's account and make a settlement about it and I have brought him here, and then Cloutier says all right, pleased to meet you, and then we went to his desk and he took some papers there and a book and says "Here is the account between your father and I," and he opened the book, a little book of accounts and then he began to read the payments, and after he read two or three I asked him to wait, that I wanted to take notes of them. He says "I have no objection." So he says come to the right hand of the desk and sit there and he passed me a pencil and tore a page out of a note book and gave it to me and I took my notes. I was looking at the book he was reading from to see whether I got every item on the book, I was watching very closely.

Q. I show you a sheet of paper marked "Pl'ff Ex. I." Is that the memorandum you made at the time?

A. Yes, that is the one; the first item there is for \$250; that date I have here April 16, 1887. It was marked on the book "Transfer of insurance." The second item was May 17, 1887, \$240, to notary, A. Tremblay. May 26, 1887, \$60. September 24, 1887, to notary L. P. Sirors \$310. April 16, 1889, \$541.

Q. Is that April or August?

A. I have it April but I know the contract is August so it was a mistake in my writing. The next is to the notary P. Duval, \$10, fees for making the contract last mentioned. The next item, February 13, 1890, loan to H. A. Tremblay, \$100; March 12, 1891, loan to

H. A. Tremblay, \$20; April 13, 1891, loan to H. A. Tremblay \$10. November 27, 1891, loan to Mrs. J. O. Tremblay \$25. January 16, 1890, paid to government \$76. Deposited a draft of \$54.89; January 8, 1894, in reference to Coloza and Blair, costs of lawyers \$44; Robitaille & Roy. In regard to the Permanent Construction Company of Quebec, when I went to the building society to look up the records and find out how much money Cloutier had received from the society, the last item was February, in his book it was marked January, the book that I took notes of and when I went to ascertain whether it was correct or not I found one more payment in the books of the society than there is entered in his book. The next item in his book was marked "Interest on \$829.89 at six per cent. for the term of ten years and a half.

Q. What was the amount?

A. \$829.89, that is correct.

Q. You are wrong about that; it is \$522.61, is it not?

A. Yes, that is right \$522.61. The next item is "Premiums on life insurance and interest on same \$1002.85." The next item is dated June 9, 1891, loan to H. A. Tremblay \$31.40; there is a note beside that here, I remember I took it as interest \$11.40; the note was \$20., interest -11.40, making a total of \$31.40. I then took some other notes. As I never had seen the insurance policy issued on my father's life I asked to see it and he brought it to me and I wanted to read it, but he took it away and says: "Wait a little while," and afterwards I said: "Mr. Cloutier, allow me to see the number of that policy, any way, if I can not read it," and he said "Yes." He

presented it to me and I read the number I took here, 149,296. That was the number of the policy and was the only thing I could act by so as to make a description of the policy when it was assigned to me; that was all the privilege allowed me that day. After I got through taking the notes I asked Mr. Cloutier whether I could read the contracts, the notarial acts, which are as mentioned in my itemized bill, and he said "Yes I will do so, I will show them to you." So I began to read the contracts and I read three of them in succession.

They were as he said nearly alike, and when I reached the
26 fourth one for \$310, and I found a clause where it was said that it was in settlement of all previous accounts and so I called his attention to that and his answer to that was that no payment was ever made, and I says "That is what is written and we are looking for writing here and that is what I am relying on." He says "All right, if that is so I will have to see my notary."

Q. Did he say what he would do about that?

A. Yes, he said he would see his notary, and I said I wished he would see his notary and let me know tomorrow what you understand by these contracts, I says "You see it makes quite a difference."

Q. Whether or not this \$310 contract was previous in date to the \$479 contract which has been in evidence?

A. The last one before that \$479 contract.

Q. Before that one?

A. Yes, the last one before it that I know of. The next thing that took place after we got through with that matter of the contract, he told me he would see his notary and let me know what he found out. I then said to him that there was one item in the account that was missing, he says "What is it?" I says "The item in reference to the house. My father sent me here to make a settlement of his accounts, and especially of that item, that he wants you to give him a receipt for the amount that is coming to him as a surplus of what you paid, as by agreement made at the time you bought the house," and I so told him what my father told me; that it was understood that that money would be held by him as security for the premiums he might pay upon the insurance.

Q. What money did you refer to?

A. The surplus on the sale of the house. Cloutier bought the house from my father and paid for it the sum of \$967 and a few cents that was due at the building society of Quebec.

Q. He paid that money to the society to square off their debt?

A. Yes, and the understanding at the time of the sale, was, I can remember, that the house should not be sold for less than
27 \$1200 and the surplus between \$967 and \$1200 would be credited to my father.

Q. Did you talk that over with Mr. Cloutier?

A. Yes sir.

Q. What did he say about it?

A. He says "I understand, but I ran some risk and ought to keep that money." I says "No sir, that is not fair and you know you promised. I know you can produce an itemized account here and I do not know the items, but this item I know as well as you do. I

know that my father gave orders to sell the house, I saw the contract and the power of attorney going to the building society to sell the house. When it came to my father," I says, "it was accompanied by a letter that if he would sign that contract you would allow him the surplus of the sale when you sold it;" and I said "To day I don't want that money, but I want a receipt for it because you sold it for more than \$967." He says "Yes, I sold it for \$1200 certainly," and I said "Give me a receipt for it, my father wants it; you have refused to give him a settlement of accounts for months and I want to give him that satisfaction before he dies. He tells me he has no hope of recovery and if it will be any satisfaction to him I am going to see to that for him." He says "Your father is not dead"; I says "No, and before he dies he wants to be sure of that and you are going to give a correct account; and furthermore, you won't refuse that or after he is dead I will spend any money to make you give an honest account. Until this I have spoken very quietly trying to find out some evidence in this case because I didn't know anything; now I know all I can know from you and I will tell you what I am going to do; if before my father's death you don't give him the satisfaction of knowing how he stands, and don't give an itemized account with credit given to him for what he has paid, after his death I will see that you do." He said a few words, I don't remember very well what, for I was getting excited some, and we were both excited, and we parted that way.

Q. Did you have any further talk with him?

28 A. I met him in the street after my father's death.

Q. Did it have anything to do with the matter of the account?

A. There was something that was said, whether I can remember very well I don't know.

Q. You spoke of a letter which you saw and which you told Mr. Cloutier had accompanied the power of attorney which he sent on for your father to sign; did you see such a letter?

A. I saw the letter, I didn't mean from Mr. Cloutier, it was written by Mr. Gaborier I think, but it was somebody acting for Mr. Cloutier.

Q. Purporting to act for Mr. Cloutier?

A. Yes sir.

Q. Have you the letter in your possession?

A. No, my father had it, and I don't know where it is; he may have destroyed it.

Q. Do you know to whom Mr. Cloutier sold the house?

A. Yes sir.

Q. To whom?

A. To William Boily he told me, I never saw the contracts.

Q. Referring to this account that was given to your brother, where the item of \$44 appears and it mentions several names, Coloza and Blair and Robitaille and Roy, did that have anything to do with the house or was anything said about the matter in your conversation with Mr. Cloutier?

A. All I know about that is that I asked him what was that item

and he said costs made in regard to the house; after he bought it. I can not remember exactly, but in regard to the house.

Q. He said it was cost made in regard to the house?

A. Yes, but it was after he bought, something that happened afterwards, I don't know what it is.

29 Cross-examination:

Q. I show you "Deft. Ex. 15," the notice in the Cloutier suit in Quebec; was that sent to you by your mother?

A. I believe it is one; she sent me one anyway.

Q. In April, 1901?

A. I can not remember whether it was April or not.

Q. When was it as far as you know?

A. As far as I can remember it was before the trial of Cloutier against the Company in Quebec.

Q. It was before the trial?

A. Yes sir.

Q. It is dated the 25th of April, 1901; how long after that do you think you received it?

A. I think I took notice of the trial a couple of days; my sister was in Quebec and telegraphed me and that was the time I received the notice.

Q. Didn't your mother mail this to you in April?

A. I couldn't remember whether it was April, I couldn't say yes or no; I don't remember.

Q. Why didn't you appear at the trial?

A. Because I thought they had no jurisdiction in Canada over me and I thought I had no business there.

Q. You knew the trial was coming?

A. Yes sir.

Q. And you didn't go because you thought the Canada court had no jurisdiction over you?

A. Because I had no business there; I had no business with Cloutier anyway I thought.

Statement of P. F. Trembley, marked "Plff. Ex. I," put in evidence by counsel for plaintiff.

30 By agreement of parties this case is reported to the law court upon so much of the foregoing evidence as is competent and legally admissible. If the law court is of opinion that the action is maintainable it shall render such judgment as the rights of the parties require.

A. R. SAVAGE,
Justice Presiding.

A true copy.

Attest:

I. M. HANSON, *Clerk.*

31

PL'FF EX. A.

R. W. C.

No. 149296.

\$2,000.

Ætna Life Insurance Company of Hartford, Connecticut.

Participating Policy.

Premium, \$50.48.

This Policy of Insurance Witnesseth, That the Ætna Life Insurance Company,

In Consideration of the representations and declarations made to it in the application for this Policy, and of the Semi-annual Premium of Fifty Dollars and Forty-eight Cents, to be paid to it in lawful funds of Canada on or before the Thirteenth day of August and February in each and every year during the continuance of this Policy.

Does hereby insure the life of Jean O. Tremblay (hereinafter called the insured), of St. Francois Javie County of Chicoutimi Province of Quebec for the term of his natural life, In The Sum of Two Thousand Dollars; Payable in lawful funds of Canada at the office of said Company, in Hartford, Connecticut, to his wife Artemise D. Tremblay or in event of her death before his to his executors, administrators, or assigns, within ninety days after satisfactory proof of the death of the said insured during the continuance of this Policy; any portion of the whole premium for the current year remaining unpaid, or any other indebtedness to said Company on account of this Policy, being first deducted therefrom.

This policy is issued and accepted upon the following express conditions and agreements:

* * * * *

SECTION 4. Any assignment of this Policy shall be attached hereto, and a copy thereof furnished said Company; and any claim against this Company, arising under this Policy, made by any assignee, shall be subject to proof of interest; but in no case does the Company guarantee the validity of an assignment.

* * * * *

In Witness Whereof, the said Ætna Life Insurance Company has, by its President and Secretary, signed and executed this contract in the City of Hartford, and State of Connecticut, this Thirteenth day of August, 1885; but the same shall not be binding until countersigned by Jos. Grondin Agent at Quebec.

J. L. ENGLISH, *Secretary*.

M. G. BULKELEY,
President.

Countersigned at Quebec this Thirteenth day of August, 1885.

JOS. GRONDIN, *Agent*.

33

PL'FF Ex. B.

H. W. O.

Form for Assignment to a Creditor.

To be Attached to Policy No. 149296 upon the Life of Jean Ovide Tremblay.

A duplicate of the assignment should at the same time be forwarded to the Company.

For Value Received, We hereby transfer, assign, and turn over unto Patrick F. Tremblay, Attorney at Law & Notary Public of Lewiston, Maine, as collateral, all our right, title, and interest in Policy of Life Insurance No. 149296 issued by The Aetna Life Insurance Company of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim, subject to J. B. Cloutier's claim.

Dated at Quebec this 14th day of January, 1901.

J. O. TREMBLAY. [s.]

ARTH. D. TREMBLAY. [s.]

Witness:

JOS. LAPOINT.

JOSEPH BLOUIN.

DOMINION OF CANADA,

City of Quebec, ss:

On this 14th day of January 1901, before me, the undersigned, appeared Jean Ovide Tremblay personally known to me, and acknowledged the execution of the above instrument.

[N. P. SEAL.]

ALPH. DUMAIS.

This acknowledgment should be executed before a Notary Public, or other officer using an official stamp seal, bearing his own name. Otherwise a certificate from the proper authority should be attached showing that he is duly authorized to administer oaths.

34

PL'FF Ex. C.

H. W. O.

(Translation.)

#607.

Before Mr. Alphonse Dumais, N. P. in & for the Prov. of Que., residing in the City of Quebec, undersigned.

Was present Jean Ovide Tremblay, residing in the said City of Quebec, Esq., surveyor.

Who has this day sold, assigned & transferred to Patrick F. Tremblay, of the Town of Lewiston, Me., one of the U. S. A., Esq., lawyer & notary public, here present & accepting, purchaser, for him, his heirs & assigns, viz.,

All the right, title & interest which the seller may have in the life ins. policy #149296, issued by the Ætina Life Ins. Co., of Hartford, Conn., as well as all the benefits & advantages resulting therefrom after the diverse sums really & legitimately due by the said seller of Jean Baptiste Cloutier, of the City of Quebec, gentlemen, & of which the reimbursement is guaranteed by diverse notarial acts of obligation, shall have been paid to the said J. B. Cloutier.

This sale made by the said seller to the said purchaser for good & valid consideration, & furthermore for & in consideration of the price of \$25 which the said seller declares to have had & received from the said purchaser, of which acquittance.

By means of which, the seller divests himself of that which is above sold & vests the said purchaser with same that he may enjoy, make & dispose of same as it shall seem good to him.

To these presents intervened Dame Arthemise Dumais, wife of the said Jean Ovide Tremblay, whom he specially authorized to the effect of same.

Who, after having had a reading of the said act of sale by the said notary, has been agreeable to it, & consents that it should
35 be executed according to its form & tenor, & furthermore renounces as much for herself as for her heirs, authorized as aforesaid, to all the interests which she might have had in the said insurance policy after the decease of the said J. O. Tremblay if she should have survived him.

And for the execution of the presents, etc.

Which Act, #607.

Done & Passed at Quebec aforesaid, the year 1901, the 14th day of January, requested to sign the parties as well as the said intervening party, have done so with us, said notary, after reading.

(Signed)

J. O. TREMBLAY.

P. F. TREMBLAY.

ARTH. D. TREMBLAY.

ALP. DUMAIS, N. P.

True copy of the minute held for record in my office.

ALP. DUMAIS, N. P.

This is a translation of the annexed French document.

ALPHONSE REED.

36

PL'FF EX. D.

ÆTNA LIFE INSURANCE COMPANY,

HARTFORD, CONN., Jan. 19, 1901.

P. F. Tremblay, Esq., #256 Lisbon St., Lewiston, Me. (Thro' T. H. Christmas).

DEAR SIR: We have your favor of the 16th inst. enclosing an assignment of policy #149,296 on the life of Jean O. Tremblay, exe-

cutted by said insured, and Arth. D. Tremblay in favor of yourself under date of Jan. 14, 1901, subject to the claim of J. B. Cloutier, which we place on file for such attention as it may deserve when the policy becomes a claim. We have on file no assignment to J. B. Cloutier, and we *sith* you would send us a duplicate of that transfer. We have, however, on file a collateral assignment in favor of the Quebec Permanent Building Society, and if the consideration for which this transfer was made has been satisfied, we will, on advise to that effect, send papers for a proper release of said transfer.

Yours truly,

J. L. ENGLISH.
B.

37

PL'FF EX. E.

R. W. C.

In the year of our Lord one thousand eight hundred and eighty-eight, the thirty-first day of August.

In presence of P. Emile Belanger, Notary Public for the Province of Quebec, undersigned.

Have appeared Jean Baptiste Cloutier Esquire, professor, residing in the City of Quebec, party of the first part, and Jean Ovide Tremblay, esquire, surveyor, residing in the town of Chicoutimi, represented in the Presents by Cyprien Labreque of the City of Quebec, Esquire, Notary, his attorney duly authorized to the effect of the presents, in virtue of a power of attorney under private signature by the said Jean Ovide Tremblay at Chicoutimi the fourteenth day of August inst. and remained annexed to the presents after having been acknowledged true by said Cyprien Labreque et signed by him by said Notary ne varietur party of the other part.

Which have declared and acknowledged what follow, viz.,

That the said Tremblay Esquire owes yet to said Cloutier Esquire a balance of four hundred and seventy-nine dollars on the accounts carried to the following contracts and transfers, viz., Obligation and transfer made before A. Tremblay notary, the sixteenth day of April, one thousand eight hundred and eighty-seven.

Obligation and transfer before the said A. Tremblay notary the seventeenth day of May one thousand eight hundred and eighty-seven.

Transfer made before C. P. Sirois, Notary; the twenty-seventh May one thousand eight hundred and eighty-seven.

That the said Jean Baptiste Cloutier is authorized to receive of the Societe de Construction Permanente de Quebec the paid balance of four hundred and seventy-nine dollars by monthly instalments of twenty-five dollars each.

38 That the said Jean Ovide Tremblay having asked from said Jean Baptiste Cloutier a delay for the payment of the said balance, and desiring to receive for his profit the said monthly instalments, to what the said Cloutier Esquire consents.

In consequence the said Cloutier Esquire for good and valuable

considerations consents to that the said Tremblay Esquire receives of the Societe de Construction Permanante de Quebec, the said monthly instalments of twenty-five dollars each from now till the first day of April one thousand eight hundred and eighty nine, and from that date the said monthly instalments of twenty-five dollars be payable to him the said Cloutier Esquire until the said balance of four hundred and seventy-nine dollars will be paid in full.

The said Tremblay agrees furthermore to pay to said Cloutier Esquire another sum of twenty-five dollars as indemnity immediately after the said capital sum herebefore will be paid, and this sum will be payable in the same way that the capital sum herebefore, that is to say the said monthly instalments.

Made and passed at Quebec under the number five hundred and one in the undersigned notary's record.

I- witness whereof the contracting parties have signed with me notary, lecture given.

(Signed)

J. B. CLOUTIER.
CYPRIEN LABREQUE.
P. E. BELANGER.

39

PL'FF EX. F.

R. W. C.

QUEBEC, January 22nd, 1902.

Extract from the books of the Society for the amounts paid by the Permanent Construction Society of Quebec to Mr. J. B. Cloutier on the salary of the late Mr. J. O. Tremblay or for him.

1889.

| | | | | |
|-------|----|------|---------------------|---------|
| April | 2. | Paid | 1st Instalment..... | \$25.00 |
| May | 1. | " | 2nd " | 25.00 |
| June | 5. | " | 3rd " | 25.00 |
| July | 3. | " | 4th " | 25.00 |
| Aug. | 1. | " | 5th " | 25.00 |
| Sept. | 2. | " | 6th " | 25.00 |
| Oct. | 1. | " | 7th " | 25.00 |
| Nov. | 2. | " | 8th " | 25.00 |
| Dec. | 3. | " | 9th " | 25.00 |

1890.

| | | | | |
|------|----|---|--------------|-------|
| Jan. | 3. | " | 10th " | 25.00 |
| Feb. | 3. | " | 11th " | 25.00 |

| | | | | |
|------|----|---|-------|---------|
| Apr. | 1. | " | ..... | \$45.00 |
| May | 2. | " | ..... | 45.00 |
| June | 3. | " | ..... | 45.00 |
| July | 5. | " | ..... | 45.00 |
| Aug. | 7. | " | ..... | 45.00 |
| Oct. | 2. | " | ..... | 45.00 |

\$275.00

| | | | | |
|----------|---|-------|-------|----------|
| Nov. 10. | " | ..... | 45.00 | |
| Dec. 3. | " | ..... | 45.00 | |
| 1891. | | | | |
| Jan. 3. | " | ..... | 45.00 | |
| | | | <hr/> | 405.00 |
| | | | | <hr/> |
| | | | | \$680.00 |

A true copy.

ALP. COTE, *Treasurer.*

Permanent Construction Society of Quebec.
Quebec, January 2nd, 1902.

40

R. W. C.

QUEBEC, *January 22nd, 1902.*

Extract from the books of the Permanente Construction Society of Quebec for the sums hereafter paid by said Society to Mr. J. Baptiste Cloutier on the salary of the late J. O. Tremblay or for him.

1888.

| | | | |
|---------|------|---------------------|---------|
| Feb. 1. | Paid | 1st Instalment..... | \$25.00 |
| Mar. 1. | " | 2nd " | 25.00 |
| Apr. 2. | " | 3rd " | 25.00 |
| May 3. | " | 4th " | 25.00 |
| June 1. | " | 5th " | 25.00 |
| July 1. | " | 6th " | 25.00 |
| Nov. 7. | " | 7th " | 25.00 |
| Dec. 3. | " | 8th " | 25.00 |

1889.

| | | | |
|---------|---|--------------|----------|
| Jan. 5. | " | 9th " | 25.00 |
| Feb. 2. | " | 10th " | 25.00 |
| Mar. 2. | " | 11th " | 25.00 |
| | | | <hr/> |
| | | | \$275.00 |

A true copy.

ALPH. COTE, *Treasurer.*

Permanente Construction Society of Quebec.
Quebec, Jan. 2, 1902.

Extract from the Ledger of the Lands of the Crown.

In re J. O. TREMBLAY & J. B. CLOUTIER.

Orders on Commission.

1888.

| | | | |
|-----------|--------|------------------------------|----------|
| May 1. | First | order to J. B. Cloutier..... | \$125.00 |
| Sept. 29. | Second | " " " " | 125.00 |

1889.

| | | | |
|---------|-------|---------------|--------|
| Feb. 3. | Third | " " " " | 125.00 |
|---------|-------|---------------|--------|

1890.

| | | | |
|---------|--------|---------------|--------|
| May 27. | Fourth | " " " " | 200.00 |
|---------|--------|---------------|--------|

| | |
|-------------|----------|
| Total | \$575.00 |
|-------------|----------|

1888.

| | | |
|-----------|-----------------------------|---------|
| June 27. | Paid to J. B. Cloutier..... | \$15.38 |
| Sept. 20. | " " " " | 17.87 |
| Nov. 27. | " " " " | 58.93 |

1889.

| | | |
|-----------|---------------|-------|
| Feb. 26. | " " " " | 91.80 |
| July 22. | " " " " | 4.26 |
| Sept. 12. | " " " " | 45.07 |

1890.

| | | |
|-----------|---------------|-------|
| Feb. 20. | " " " " | 97.22 |
| Apr. 8. | " " " " | 44.47 |
| Sept. 16. | " " " " | 26.01 |
| Nov. 15. | " " " " | 21.26 |

1891.

| | | |
|---------|---------------|--------|
| Feb. 6. | " " " " | 12.22 |
| May 14. | " " " " | 100.96 |

535.45

| | |
|--|---------|
| Balance due to J. B. Cloutier, by Mr. J. O. Tremblay | \$39.55 |
|--|---------|

E. E. T.

Quebec, Sept. 7, 1901.

J. C.
A. M.

42

PL'FF EX. H.

QUEBEC, *January* 27, 1901.

Mr. J. O. Tremblay, in Account with J. B. Cloutier.

1889.

| | | |
|-----------|--|---------|
| March 19. | Deficit on Bill No. 3 paid by me to the Government | \$54.89 |
| Aug. 16. | Loaned to J. O. Tremblay on assignment of wages (Notary Duval) | 541.00 |
| " " | Fees paid to Notary Duval for deeds and legal notices | 10.00 |

1890.

| | | |
|-----------|--|--------|
| June 16. | Deficit on Bill No. 4 paid by me to the Government | 76.00 |
| April 30. | Loaned to H. A. Tremblay to pay his dues to the Government | 100.00 |

1891.

| | | |
|----------|---|-------|
| Oct. 27. | Money loaned to Mrs. J. O. Tremblay | 25.00 |
|----------|---|-------|

1894.

| | | |
|------|---|-----------|
| Jan. | Re Coloza Blair expenses of Court paid to Rob. & Roy | 44.00 |
| | Interest for ten years on \$850.89 at 6% | 636.60 |
| | Premiums and interest for ten years at 6% on policy #129296 | 1073.36 |
| | | <hr/> |
| | | \$2560.85 |

1890.

| | | |
|---------|--|-----------|
| May 27. | Money paid to Mrs. J. O. Tremblay on balance of Bill No. 4 | 115.00 |
| | | <hr/> |
| | | \$2675.85 |

43

PL'FF EX. I.

| | | | |
|----------------------|----------|---|-----------------|
| April 16, 1887 | \$250.00 | Transfer of insurance. | |
| May 17, 1887 | 240.00 | A. Tremblay..... | \$25.00 July 25 |
| May 26, 1887 | 60.00 | Sirois..... | May/89 10% |
| Sept. 24/87 3614 | 310.00 | Sirois L. P. | |
| April 16, 1889 | 541. | P. E. Duval. | |
| | | Fees paid to Duval..... | 10.00 |
| Feb. 13/90 | | Loaned to H. A. Tremblay..... | 100.00 |
| March 12/91 | " | " | 20.00 |
| April 13/91 | " | " | 10.00 |
| Nov. 27/91 | | Mme. J. O. T..... | 25.00 |
| Jan. 16/90 | | Paid to Government on draft No. 38.. | 76.00 |
| | | Deficit of collection draft.....F. | 54.89 |
| Jan. 8/94 | | Re Coloza-Blair lawyer's fees.....P. R. | 44.00 |
| | | | <hr/> |
| | | | 1784.89 |

| | | |
|--|--|---------|
| Received from the Building Society, last payment 12 Feb. '91, till Janu- ary 3/91..... | | 955.00 |
| | | 829.89 |
| Interest on \$829.89 at 6% for 10½ yrs. | | 522.61 |
| | | 1352.50 |
| Premiums on life insurance and in- terest on same..... | | 1002.88 |
| | | 2355.38 |
| June 9/91 | Loaned to H. A. Tremblay, \$20, int. 11.40..... | 31.40 |
| | | 2386.78 |
| No. of Policy 149,296. | | |

44

DEFT. EX. 1.

Memorandum of agreements and admissions to be used in the trial of the suit of Patrick F. Tremblay vs. The Ætna Life Insurance Company now pending in the Supreme Judicial Court for the County of Androscoggin.

I. It is agreed that there was due on policy #149296 issued by The Ætna Life Insurance Company on Life of Jean O. Tremblay the sum of One Thousand Nine Hundred and Fifty-nine Dollars and Forty-nine Cents (\$1959.49) at the time of his death on January 21, 1901 payable in ninety days after satisfactory proofs of death.

II. It is admitted that the defendant company on April 9, 1901, deposited said sum of \$1959.49 with the Treasury Department of Quebec, of which deposit all claimants of said money had notice. It is further admitted that such deposit was a proper procedure under the laws of Canada to protect said Company against costs in any action that might be brought against it by any party or parties over whom the Canadian Court had jurisdiction.

III. All papers marked with the initials "H. W. O." made by Henry W. Oakes or the initials "R. W. C." made by Ralph W. Crockett are to be received and admitted without proof of their execution and with the same effect as though they were original documents.

IV. The certified copies of the "Bref D'Assignment et Declaration" the "Proofs" and the "Judgment" in the suit of Jean Baptiste Cloutier vs. The Heirs of the late Jean Ovide Tremblay et als. in the Superior Court for the Province and District of Quebec, all of which are marked with the initials "H. W. O." made by Henry W. Oakes are agreed to be a complete and proper copy of the record of the judgment in said suit.

45 V. No question is raised by the plaintiff as to identity of the subject matter in said Quebec suit and in this suit, nor as

to the identity of the parties as far as they are named in both suits and in the various documentary evidence to be introduced in this suit.

VI. It is admitted that said Quebec suit was a proper procedure under the laws of Canada; that notice thereof was published in accordance with the order of Court; and that the Court in which the judgment was rendered was a Court of competent jurisdiction of the subject matter of said suit. But the plaintiff in this suit denies that said Court had any jurisdiction over him and claims that he is not in any way bound by said judgment.

VII. It is admitted that Jean B. Cloutier loaned Jean O. Tremblay the sum of Five Hundred and Forty-one Dollars (\$541.) on or before August 16th, 1889. This amount with interest on the same at the rate of six per cent. per annum from said date said Cloutier became entitled to receive from the proceeds of said policy #149,296 when it became due and payable after the death of said Jean O. Tremblay, less any amounts paid to him on account of said loans.

VIII. It is admitted that at the request of the said Jean O. Tremblay and his wife Artemise D. Tremblay said Cloutier paid the premiums on said policy #149,296 according to the following schedule:

| | | |
|----------|----------|---------|
| 1891. | Feb. 13. | 13.02. |
| | Aug. 13. | 42.02. |
| 1892. | Feb. 13. | 42.02. |
| | Aug. 13. | 41.54. |
| 1893. | Feb. 13. | 41.54. |
| | Aug. 13. | 41.05. |
| 1894. | Feb. 13. | 41.05. |
| | Aug. 13. | 40.56. |
| 1895. | Feb. 13. | 40.56. |
| | Aug. 13. | 40.06. |
| 1896. | Feb. 13. | 40.06. |
| | Aug. 13. | 39.57. |
| 1897. | Feb. 13. | 39.57. |
| | Aug. 13. | 39.08. |
| 1898. | Feb. 13. | 39.08. |
| | Aug. 13. | 38.59. |
| 46 1899. | Feb. 13. | 38.59. |
| | Aug. 13. | 38.10. |
| 1900. | Feb. 13. | 38.10. |
| | Aug. 13. | 40.51. |
| | | 774.67. |

The above amounts with interest on the same at the rate of six per cent. per annum from the several dates of their payment as specified above, said Cloutier became entitled to receive from the proceeds of said policy when it became due and payable after the death of the said Jean O. Tremblay less any sum paid to him on account.

IX. It is admitted that Jean B. Cloutier loaned to Jean O. Tremblay the sum stated below and at the date specified. This amount

with interest on the same at the rate of six per cent per annum from said dates, less any amounts paid to him on account of said loan, were due to said Cloutier at the date of said Tremblay's death, but the plaintiff does not admit that said Cloutier became entitled to receive it from the proceeds of said policy.

1890. June 16th. 76.00.

Nothing in the foregoing agreements and admissions shall be construed as a waiver of the right of the plaintiff to introduce evidence of payments made to said Jean B. Cloutier on account of the indebtedness from said Jean O. Tremblay to him as specified above.

Nothing in the foregoing agreements and admissions shall be construed as a waiver on the part of the defendant of its right to object to the admission of any and all evidence tending in any way to impeach or attack said judgment in said Quebec suit, including evidence of credits mentioned above.

OAKES, PULSIFER & LUDDEN,
Attorney- for Plaintiff.

RALPH W. CROCKETT,
Attorney for Defendant.

47 Code of Civil Procedure in the Province of Quebec.

SECT. 136. When a defendant who is absent from the Province has no domicile, ordinary residence, or place of business therein; or

When a consort, sued for separation from bed and board, is absent from the Province:

The judge, or prothonotary, upon a return to that effect, may order the defendant to appear within one month from the last publication, in the manner hereinafter prescribed, of the order thus rendered.

A synopsis of the order, drawn up in accordance with the form contained in Schedule B in the Appendix to this Code, is twice inserted in French and in English, in a newspaper and in each language, respectively, in the district where the court sits. If there is no such newspaper in the district, it is inserted in a similar newspaper in the nearest locality. Such newspapers are mentioned in the order.

SCHEDULE B.

Form for Publication of Summons in Newspaper (Art. 136).

PROVINCE OF QUEBEC,
District of —:

Superior Court.

A. B., of the (Domicile and Occupation), Plaintiff,

vs.

C. D., of the (Residence), Defendant.

The defendant is ordered to appear within one month.

(Date.) E. F., P. S. C.

48

DEFT. EX. 2.

H. W. O.

(Translation.)

The year 1889, the 16th day of the month of August,

Appeared before the undersigned N. P. for the Prov. of Que., residing in the City of Quebec.

Jean Ovide Tremblay, of the Town of Chicoutimi, Esq., surveyor & Crown Lands agent, represented & acting to the presents by Dama Arthemise Dumais, his wife, according to power of attorney passed before Mr. Thos. Z. Cloutier, notary, at Chicoutimi, the 13th August instant.

Which said Mr. Tremblay, acting as aforesaid, has acknowledged & confessed to owe well & legitimately to Jean Baptiste Cloutier, residing in the City of Quebec, Esq., Professor at the Laval Normal School, present & accepting creditor, for him, his heirs and assigns, viz., the sum of \$541, for a like amount loaned to the said debtor, as this latter, acting as is said, acknowledges same, of which acquittance.

Which said sum the said debtor promises to give back & pay to the said creditor or to his legitimate representatives, as follows, viz., in 22 monthly payments, of which 21 of \$25 & 22nd & last payment of \$16. the 1st of each month, the 1st of which shall be due & exigible the 1st month, 1891, & thus on every month until the final reimbursement of the said sum.

To insure the reimbursement of this said sum, the said J. O. Tremblay transfers to the said Mr. Cloutier, like sum of \$541 payable at the aforesaid epochs, on the salary which he draws from the Crown Lands Dept., as agent of Lands for the Division of Chicoutimi, which sum shall be paid at the aforesaid epochs by the "Societe de Construction Permanante de Quebec," if it still draws at that time the salary of the said J. O. Tremblay, as it does at present, or by the Crown Lands Dept., if the said society of construction then no longer draws that salary.

49 And in the case of the decease of the debtor, the said Society of construction shall pay from the amounts which it shall receive in payment of the insurance policies on the life of the said J. O. Tremblay which have already been transferred to it, the said sum of \$541, on all balances which may remain due on said sum. And if the said Society should give back to him the said policies of insurance, the said J. O. Tremblay pledges himself to transfer them to the said Mr. Cloutier at his first request.

It is agreed that if the said J. O. Tremblay should change situations, he shall give to the said Mr. Cloutier a draft on the new salary attached to this new situation, for a sum equal to that which shall then be due to the said Mr. Cloutier, as much by virtue of the present as by virtue of all other acts previous to this one.

Which act, done & passed in the City of Quebec, office of Mr. Paul Emile Duval, notary, undersigned, the day & year aforesaid,

under the #1384 of his minutes. In faith of which the appearers have signed with us, notary, after reading.

(Signed)

A. D. TREMBLAY.
J. B. CLOUTIER.
P. E. DUVAL, N. P.

(True copy.)

P. E. DUVAL.

(Endorsed:) #1384.—Aug. 16, 1889.—Obligation: J. O. Tremblay, Esq., to J. B. Cloutier, Esq., 3rd copy.—Copy \$1.50. C. S. #1070. Cloutier vs. Tremblay Heirs & Insurance Company. Exhibit B of the Plaintiff. P. E. Duval, N. P. Filed May 1, 1901, G. P. Dep. P. S. C.

True Certified Copy.

QUEBEC, August 27, 1901.

N. Fortier, Dep. P. S. C.:

This is a translation of the annexed French document.

ALPHONSE REED.

50

DEFT. EX. 3.

H. W. O.

(Form for Assignment to a Creditor.)

To be attached to Policy No. 149,296 upon the life of ———.

A duplicate of the assignment should at the same time be forwarded to the Company.

For value received, I hereby transfer, assign, and turn over unto J. B. Cloutier, of Quebec, Canada, as collateral, all right, title, and interest in Policy of Life Insurance No. 149,296 issued by the Ætna Life Insurance Company, of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim.

Dated at Lewiston this 24th day of November, 1891.

J. O. TREMBLAY. [L. s.]

Witness:

NAZAIRE LAYETTE.

STATE OF MAINE,

County of Androscoggin, ss:

On this 24th day of November, 1891, before me, the undersigned, appeared J. O. Tremblay personally known to me, and acknowledged the execution of the above instrument.

[SEAL.]

ADDISON SMALL,
Notary Public.

This acknowledgment should be executed before a Notary Public, or other officer using an official stamp seal, bearing his own name. Otherwise a certificate from the proper authority should be attached showing that he is duly authorized to administer oaths.

51

DEF. EX. 4.

QUEBEC, January 7, 1901.

Mr. J. O. Tremblay, on Account with J. B. Cloutier.

| | | |
|----------|--|-----------------|
| 1889. | | |
| March | 19. Deficit on bill No. 3 paid by me to government. | \$54.89 |
| August | 16. Loan to J. O. Tremblay on assignment of wages (Not Duval)..... | 541.00 |
| " | " Fees paid to Notary Duval for deeds and legal notices | 10.00 |
| 1890. | | |
| June | 16. Deficit on bill No. 4 paid by me to the government | 76.00 |
| April | 30. Loan to H. A. Tremblay to pay his dues to the government | 100.00 |
| 1891. | | |
| Oct. | 27. Money loaned to Mrs. J. O. Tremblay..... | 25.00 |
| 1894. | | |
| January. | Re Coloza Blair expenses of Court paid to Robtaille & Roy..... | 44.00 |
| | Interest on ten yrs. on \$850.89 at 6% | 636.60 |
| | Premiums and interest on 10 yrs. at 6% on policy No. 149296..... | 1073.36 |
| | | <hr/> \$2560.85 |

52

H. W. O.

Affidavit Required from the Assignee.

- | | |
|---|---|
| 1. What is your full name and your age. | 1. Jean B.aptiste Cloutier. Age 70. |
| 2. What is your residence (Town, County and province)? | 2. Quebec, Co. & Prov. of Quebec. |
| 3. What was the full name, last legal residence (Town and Province), and date of death of the deceased? | 3. Jean Ovide Tremblay. Quebec, Co. & Prov. of Quebec. Jan. 21, 1901. |

- | | |
|---|--|
| <p>4. What is the number, date and amount of the policy or policies of life insurance issued by the Ætina Life Insurance Company on the life of the said deceased, under which you claim?</p> <p>5. Was the insurance under said policy or policies assigned to you, and do you claim as such assignee?</p> <p>6. What amount do you claim?</p> <p>7. What was the nature and amount of the consideration for which the said insurance was assigned to you?</p> <p>8. Has said insurance, or any part of it, ever been transferred or assigned by you? If so, give the names of any and all such assignees.</p> | <p>4. Number. Date. Amount. 149296 Aug. 13, 1885 \$2000.</p> <p>5. Yes, said policy was assigned to me November 24, 1891, and I claim as assignee.</p> <p>6. The whole amount due under said policy No. 149296.</p> <p>7. Several loans and all the prem.'s paid by me since 1891. My account is attached thereto.</p> <p>8. No.</p> |
|---|--|

(NOTE.—A full statement in detail of the amount and character of the indebtedness or other consideration should here be given.)

[SEAL.] (Sign.) JEAN BAPTISTE CLOUTIER.

PROVINCE OF QUEBEC,
County of Quebec, ss:

Subscribed before me this twenty-sixth day of January, 1901, by Jean Baptiste Cloutier personally known to me, and who made oath that the foregoing statements and answers are true and full.

THOS. N. W. PAMPALON, N. P. [SEAL.]

Certify true copy Aug. 13, 1901.

A. H. VUNT, L. A.

53

DEFT. EX. 5.

H. W. O.

Affidavit Required from the Assignee.

- | | |
|---|---|
| <p>1. What is your full name and your age?</p> <p>2. What is your residence (Town, County, and Province)?</p> | <p>1. Name. Patrick F. Tremblay. Age 28.</p> <p>2. Lewiston, Maine.</p> |
|---|---|

- | | |
|--|---|
| <p>3. What was the full name, last legal residence (Town and Province), and date of death of the deceased?</p> <p>4. What is the number, date and amount of the policy or policies of life insurance issued by the Aetna Life Insurance Company on the life of the said deceased, under which you claim?</p> <p>5. Was the insurance under said policy or policies assigned to you, and do you claim as such assignee?</p> <p>6. What amount do you claim?</p> <p>7. What was the nature and amount of the consideration for which the said insurance was assigned to you?</p> | <p>3. Name. Jean Ovide Tremblay. Residence, Quebec, Co. and Prov. of Quebec. Date of Death Jan'y 21, 1901.</p> <p>4. Number. Date. Amount. 149296. Aug. 13, 1885. \$2000</p> <p>5. Was assigned to me by J. O. Tremblay & Artemise D. Tremblay on Jan'y 14, 1901, as copy of assignment attached thereto will show.</p> <p>6. All, but what is excepted by assignment being between \$500.00 to \$1000.</p> <p>7. Cash and disbursements to be made or already made including funeral expenses.</p> |
|--|---|

(NOTE.—A full statement in detail of the amount and character of the indebtedness or other consideration should here be given.)

- | | |
|---|---------------|
| <p>8. Has said insurance or any part of it, ever been transferred or assigned by you? If so, give the names of any and all such assignees.</p> <p>(Sign.)</p> | <p>8. No.</p> |
|---|---------------|

P. F. TREMBLAY.

STATE OF MAINE,
County of —, ss:

Subscribed before me this thirtieth day of January, 1901, by Patrick F. Tremblay personally known to me, and who made oath that the foregoing statements and answers are true and full.

DANA S. WILLIAMS. [SEAL.]

Certified true copy Aug. 13th, 1901.
[SEAL.]

A. H. VUNT, P. A.

54

DEF. EX. 6.

H. W. O.

Affidavit of the Party Who Claims the Amount Insured.

(Not an assignee.)

1. What is your full name, residence, and age?

| Name. | Town. | Province. | Age. |
|--------------------------|--------|-----------|------|
| Artemise Dumais Tremblay | Quebec | Quebec | 65 |

2. What was the full name and last legal residence of the deceased (Town, County and Province)?

2. Name. Jean Ovide Tremblay.
Residence. Quebec, Co. & Prov. of Quebec.

3. When did the said deceased exhibit the first symptoms of the illness which eventually resulted in death?

3. About 6 months ago.

4. What is the number, date and amount of the Policy or Policies of life insurance issued by the Ætna Life Insurance Company on the life of the said deceased, under which you claim?

4. Number. Date. Amount.
149,296 Aug. 13, 1885 \$2000

5. What relationship do you bear to the said deceased?

5. The true and lawful wife of the deceased.

6. By what authority or title, or in what capacity, do you claim?

6. As the true and lawful wife of the deceased to whom I was married on the 3 day of July 1863.

(NOTE.—If you claim as a beneficiary, state whether you were the wife, husband, child, parent, or other near relative, as the case may be, of the said deceased, and if you were the wife or husband, state when you were married to the said deceased. If you claim as executor or administrator or guardian, please so state, giving the full name of the estate or person for whom you are acting, and their relationship to the said deceased.)

7. Has there been any appropriation, apportionment, assignment, or transfer of said policy or policies, or any declaration or revocation of benefit under the same? If so, state particulars.

7. Said policy was assigned to the Quebec Permanent Building Society on the 22nd. day of September, 1885, but said assignment was relinquished by said Society the 26th day of November 1891. It was as-

signed also to Jean Baptiste Cloutier, of Quebec, on the 24th day of November 1891 and said assignment is still in force. A further assignment was made in favor of P. F. Tremblay, Att'y at Law, of Lewiston, Maine, Jan'y 14, 1901.

ARTEMISE DUMAIS TREMBLAY.

PROVINCE OF QUEBEC,
County of Quebec, ss:

Subscribed before me this twenty-eight day of January 1901, by Artemise Dumais Tremblay, of Quebec personally known to me, and who made oath that the foregoing statements and answers are true and full

THOS. M. W. PAMPALON.

55

DEFT. EX. 7.

In the year one thousand eight hundred and eighty-nine, the sixteenth day of the month of August.

Have appeared before me the Notary Public for the Province of Quebec, residing in the City of Quebec, undersigned.

Jean Ovide Tremblay, of the Town of Chicoutimi, Esquire, surveyor and crown Land Agent, represented and acting to these presents by Mrs. Artemise Dumais, his wife according to a power of Attorney made before Notre. Thos. Z. Cloutier Notary of Chicoutimi the sixteenth day of April of the same year.

Said J. O. Tremblay, acting as aforesaid, has acknowledged and confessed to well and legitimately owe to Jean Baptiste Cloutier, residing in said City of Quebec, Esquire, professor at the "Ecole Normale Laval" present and accepting, creditor for him his heirs and legal representatives, it is to say, the sum of Five hundred and forty-one dollars, for same amount loaned to said debtor, also that this last mentioned, acting as said is, acknowledged it, for what release "acquittance."

Said specified sum, said debtor promises to render and pay to said creditor or to his legal representatives as follows, to wit:—in twenty-two monthly payments, of which, twenty-one of twenty-five dollars and the twenty-second and last payment of sixteen dollars, the first of each month, the first of which will be due and exigible the First May one thousand eight hundred and ninety-one, and the same thenceforth each month until the final reimbursement of said sum.

To assure the reimbursement of said sum, the said J. O. Tremblay, transfers to said Cloutier, same sum of Five hundred and forty-one dollars payable to the aforesaid dates, out of the salary which

56 he withdraws of the Crown Land Department as Crown Land Agent for the Division of Chicoutimi, said sum will be paid at said dates aforesaid by the Permanent Construction Society of Quebec, if it does yet withdraw at that time the salary of paid J. O. Tremblay, as it actually does, or by the Crown Land Department, if said Quebec Permanent Construction Society does not withdraw that salary then.

And in case of the death of said debtor, said Construction Society will pay out of the amounts that it will receive in payment of policies of insurance on the life of said J. O. Tremblay, which have already been transferred to it, said sum of Five hundred and forty-one dollars or all balance that may remain due on said sum.

And if said Society would give him back said insurance policies, the said J. O. Tremblay promise- to transfer them to said Cloutier at his first demand.

It is agreed that if the said J. O. Tremblay would change his situation, he will then give to said Cloutier, an order on the new salary attached to that new situation, for an equal sum to that which will then be due to said Cloutier, either in virtue of the present than in virtue of all and any other contract made previously of this one. Of what act made and executed in the City of Quebec, recorded in the undersigned Notary Paul Emile Duval's office, the year and day afore mentioned under number thirteen hundred and eighty-four of his minutes.

In Witness whereof the contracting parties have signed with us notary, lecture given.

A. D. TREMBLAY.

J. B. CLOUTIER.

P. E. DUVAL, N. P.

C. P. G.

57 True copy from the records found in the office of P. E. Duval, deceased, in his lifetime notary for the Province of Quebec, deposited in the archives of this District, verified, and collation made by us undersigned Gu-dians of same and Deputy Clerk of the Superior Court, at Quebec this Fourth day of September, A. D. 1901.

N. FORTIER,

Dep. P. C. S., Clerk of Supreme Court.

58

DEPT. EX. 7.

H. W. O.

"Voluntary Deposit."

Duplicate for the Depositor.

*Judicial Deposit Receipt under Articles 1192, &c., Revised Statutes
P. Q.*

No. 413.

\$1,959 49/100.

PROVINCE OF QUEBEC,.

District of —:.

In the — Court of —.

Case No. —.

— —, Plaintiff,

— —, Defendant.

Received from Ætna Life Insurance Co. the sum of Nin-teen
hundred & fifty-nine 49/— Dollars being deposit by said Co. as In'ce
on life of Jean O. Tremblay of Quebec.

UNION BANK.

At Quebec this 9th day of April 1901.

GEO. E. POSTON,

Per — —.

59

DEPT EX. 8.

H. W. O.

(Duplicate.)

To the Honorable the Treasurer of the Province of Quebec, Quebec.

SIR: Take notice that the Ætna Life Insurance Company of Hartford, Connecticut, one of the United States of America, a body politic and corporate having its principal office and place of business for the Province of Quebec in the City and District of Montreal, and also having an office in the City of Quebec, hereby deposits with you under the Judicial Deposits Act of Quebec, the sum of nineteen hundred and fifty-nine dollars and forty-nine cents (\$1959.49) currency, being the full amount of insurance money due and payable by it, less a half-yearly premium unpaid, which falls to be deducted,

under Policy #149,296, issued by it on the life of the late Jean O. Tremblay, in his lifetime formerly of St. François Xavier in the said Province, and at the time of his death of the City of Quebec, and which sum is so deposited with you because the same is claimed by conflicting claimants and the said Company does not know to whom to pay the same, to wit, by Jean Baptiste Cloutier, of the City of Quebec, under transfer to him by the said late Jean O. Tremblay of the 24th of November 1891, notified to the said Company as appears by the claim of the said Cloutier upon the said Company herewith filed marked "A", and is also claimed by Patrick F. Tremblay, of Lewiston, in the State of Maine, one of the said United States, under transfer to him by the said Jean O. Tremblay and Artemise D. Tremblay (his wife) dated 14th January 1901, as appears by his claim herewith filed, marked "B", which sum is also deposited with you to the end that the same may be adjudged and paid over to whomsoever is entitled to the same and the said Company be released and discharged from all liability for said insurance money or under said policy, and to the end that said policy with receipts be surrendered and delivered up to said Company as paid and satisfied, together with the exhibits herewith filed, which form part of the proofs and archives of the said Company.

Quebec 9th April 1901.

T. H. CHRISTMAS, *Mgr.*

The undersigned hereby acknowledges receipt from the said Ætna Life Insurance — of the sum of nineteen hundred and fifty-nine dollars and forty-nine cents (\$1959.49) deposited with the Treasurer of this Province as stated in the foregoing notice of deposit.

Quebec 9th April 1901.

[SEAL.]

(Signed)

A. H. VUNT,
Provincial Auditor.

To the said Jean Baptiste Cloutier, Quebec, Que.:

To the said Patrick F. Tremblay, Lewiston, Maine, U. S.:

To Messrs. Oakes, Pulsifer & Ludden, of Auburn, Me., U. S. aforesaid, Attorneys at Law for the said Patrick F. Tremblay, and to Dame Artemise D. Tremblay, of Quebec, widow of the said late Jean O. Tremblay:

Take notice of the foregoing Deposit made this day by the Ætna Life Insurance Company, and govern yourselves accordingly.

Quebec, 9th April 1901.

[SEAL.]

T. H. CHRISTMAS, *Mgr.*

Approved,

N. W. TRUHOLM.

DEF'T EX. 9.

61

H. W. O.

(Translation.)

Superior Court, Quebec.

J. B. CLOUTIER, Plaintiff,

vs.

THE HEIRS OF J. O. TREMBLAY, Defendants, & DAME ARTHEMISE
DUMAIS et al., "Mise-en-Cause."

To this honorable Court, the Plaintiff represents:

(1) From before the 16th of August, 1899, viz., the 22nd, Sept., 1885, late Jean Ovide Tremblay, then of the Town of Chicoutimi, Surveyor, had borrowed from the "Societe de Construction Permanante de Quebec", & transferred to this latter among other guarantees of the reimbursement of the said loan, jointly with his wife the said Dame Arthemise Dumais, mise-en-cause, the insurance policy #149296 issued by the Aetna Insurance Company, to the amount of \$2000, & produced in this case the aforesaid transfer as exhibit A of the Plaintiff;

(2) The 16th of August, 1889, the said Dame Arthemise Dumais, duly empowered by attorneyship from her said husband, did by act made & read at Quebec, before Mr. P. E. Duval, notary, borrow from the Plaintiff the sum of \$541, payable by the terms of the said act marked exhibit B of the plaintiff, & did for guarantee of the said loan, assign & transfer to the plaintiff the aforesaid policy, likewise to the said "Societe de Construction Permanante de Quebec";

(3) The said "Societe de Construction Permanante de Quebec" having been paid its loan to the said J. O. Tremblay, the said policy was then remitted to the said plaintiff assignee of same, and of which he has since always been in possession of.

(4) The said late J. O. Tremblay & his wife being unable to pay the premiums on the said insurance policy, the plaintiff did, in the interest of the said insured & for his profit & benefit & that of his wife, upon their request & requisition, advance & pay the said premiums at their respective maturities, viz., the 13th Feb'y & the 13th August of each year, since the 13th of Feb'y, 1891, to the 13th of August, 1900, inclusively, viz., the sum of \$773.16.

(5) The interests on these aforesaid premiums amount to \$228.49, forming with the aforesaid premiums \$1001.65 as appears by the statement of account piece C of the plaintiff;

(6) The said Jean Ovide Tremblay paid none of the payments stipulated in reimbursement of the aforesaid sum of \$541 loaned to him & the interests matured on the said loan amount to the sum of \$344.60, forming in all \$845.60.

(7) The said J. O. Tremblay always acknowledged & promised to pay the aforesaid interests, as much on premiums & on aforesaid loan & again notably in the course of the year 1900;

(8) The 19th of March, 1890, the plaintiff did, in the City of Quebec, loan & advance to the said J. O. Tremblay at his request & for his profit & advantage, \$54.89 to cover deficit on drafts of collection paid to the Provincial Government & the 16th of June, same year, \$76 for the same purpose.

(9) The 30th of April, 1890, he equally loaned & advanced at the request of the said J. O. Tremblay, to his son, H. A. Tremblay, at Quebec, the sum of \$100, for the advantage & benefit of the said J. O. Tremblay, & the 27th October, 1891, at Quebec, he equally loaned & advanced to the wife of the said J. O. Tremblay, acting for & in the name of her husband, the sum of \$25.00.

(10) The 4 is as aforesaid form the sum of \$255.89, upon which there is due for interest, that of \$165.65, forming \$421.54 which the said J. O. Tremblay often acknowledged to owe & promised to pay to the plaintiff, & notably in the course of the years 1894 & up
63 to the date of his decease;

(11) The said Jean Ovide Tremblay died at Quebec, the 21st January last & his heirs took possession of his goods;

(12) The said defendants owe in all the sum of \$2268.79 to the plaintiff:

(13) The mise-en-cause, the Ætna Insurance Company, after the decease of the said Jean Ovide Tremblay, was ready to pay to the plaintiff the amount of the said insurance, less the premium of Feb'y. 13, last unpaid & to be deducted therefrom, but that one of the heirs of the said J. O. Tremblay, viz., Patrick F. Tremblay, defendant & mise-en-cause, opposed himself to the said payment, pretending that the said insurance policy had been sold to him;

(14) The plaintiff is regular assignee of the aforesaid policy, assignment transfer — been made to him by the said late J. O. Tremblay & his wife, the said mise-en-cause, & furthermore the 26th of Feb'y last, the said mise-en-cause, Dame Arthemise Dumais, made a sworn declaration, declaring that the plaintiff was assignee of the sum of \$1614 arising from this policy;

By arrangement, to avoid all costs, the plaintiff would have been & was, then ready to limit his claim on the said policy to the aforesaid sum of \$1614, but the said Patrick F. Tremblay always neglected to make such settlement, & in view of this refusal on the part of the said Patrick F. Tremblay, the said Ætna Insurance Company deposited in the Treasury Department, the aforesaid amount of the said policy;

(15) The actual amount due to the plaintiff for the aforesaid causes is \$2268.79, guaranteed by the aforesaid policy.

For which the plaintiff requests (1) that the defendants be condemned to the payment of the said sum of \$2268.79, with interest to the plaintiff, (2) that it be declared by the Judgment of this Honorable — that the plaintiff as assignee — insurance policy on
64 the life of the said Jean Ovide Tremblay, #149,296, issued by the Ætna Insurance Company, mise-en-cause, has right to the amount deposited, which shall be remitted to him upon production of the judgment to be rendered in this case—the whole with

costs against the defendants in any case & against the mise-en-cause in case of contest on their part only.

Quebec, April 22, 1901.

(Signed)

ROBITAILLE & ROY,
Att'ys for Plaintiff.

True copy.

ROBITAILLE & ROY,
Att'ys for Plaintiff.

Summary Procedure.

PROV. OF QUEBEC,
Dist. of Quebec:

In the Superior Court.

(# 1070.)

Edward VII, by the Grace of God King of the United Kingdom of Great Britain, Defender of the Faith,

To the heirs of late Jean Ovide Tremblay, during his life time of the Town of Chicoutimi, surveyor, the said heirs residing at Lewiston, Maine, U. S. A., Defendants, &

The Life Insurance Company: Aetna Life Insurance Company, of the Town of Hartford, Conn., U. S. A., & having its business office in this Province, in the City of Quebec, Dame Arthemise Dumais, widow of the said late Jean Ovide Tremblay, & Patrick F. Tremblay, these latter two of Lewiston, Me., U. S. A. mise-en-cause, the said Patrick F. Tremblay furthermore one of the defendants aforesaid mise-en-cause:

We condemn you to appear in our said Court, at the Court House, in the City of Quebec, the 6th day after the signification of this brief, to answer to the demand of Jean Baptiste Cloutier, of
65 the City of Quebec, Gentlemen, Plaintiff, contained in the declaration herewith annexed.

In default by you to do so, this plaintiff may obtain judgment against you by default, with interest & costs.

In faith of which we have had affixed to the presents the Seal of our said Court, at Quebec, the 22nd day of April, in the year of our Lord, 1901.

(Signed)

EDL. BURROUGHS,
Dep. P. S. C.

This brief is addressed to all & each of the Bailiffs of the Superior Court for the Prov. of Quebec, named for the Dist. of Quebec.

True copy.

ROBITAILLE & ROY, *Att'ys.*

This is a translation of the annexed French document.

ALPHONSE REED.

66

H. W. O.

DEF'T EX. 10.

(Translation.)

CANADA,
Province of Quebec,
District of Quebec:

Superior Court.

(# 1070.)

JEAN BAPTISTE CLOUTIER, Plaintiff,
 vs.

HEIRS OF LATE JEAN OVIDE TREMBLAY, Defendants, & THE ÆTNA
 LIFE INSCE. Co. et al., Mis-en-cause.

I, undersigned, Assistant-Prothonotary of the Superior Court for
 the district of Quebec, certify, that the Defendants & mis-en-cause
 in this case failed to appear in the delay required by law and that
 default was registered against them.

Quebec, 3rd June, 1901.

(Signed)

ALPH. BOISSONEAULT,

Dep. P. S. C.

True copy.

ALPH. BOISSONEAULT, *D. P. S. C.*

Superior Court, Quebec.

J. B. CLOUTIER

vs.

THE HEIRS OF THE LATE J. O. TREMBLAY & THE ÆTNA LIFE INS.
 Co. et al.

*Motion on the Part of the Plaintiff, in View of the Report of the
 Bailiff, Bearer of the Brief in his Case.*

That the heirs of the late Jean Ovide Tremblay and Dame Arthe-
 mise Dumais, widow of the said Jean Ovide Tremblay & Patrick J.
 Tremblay, of Lewiston, Me., U. S. A. be, by 2 advertisements pub-
 lished in the "Soliel" & and Quebec Daily Mercury, assigned to ap-
 pear in this case & that in default by them to do this in a month,
 to count from the date of the last advice, the Plaintiff be permitted
 to proceed against them as a case by default, with costs.

Quebec, April 25, 1901.

67 (Signed)

ROBITAILLE & ROY,

Pro. Plaintiff.

Motion granted with expenses.

Quebec, April 25, 1901.

(Signed)

P. MALOUIN, *P. S. C.*

(Endorsed:) C. S. No. 1070. Cloutier vs. Heirs J. O. Tremblay & Ins. Co. Motion to summon through the press. Filed Apr. 25, 1901. A. B. D. P. S. C.

True copy.

ALPH. BOISSONNEAULT, *Dep. P. S. C.*

The above is a translation of the annexed French document.
A. F. THERRIEN.

68

H. W. O.

DEF. EX. 11.

(*Translation.*)

(Sworn.)

A. B., *D. P. S. C.*

CANADA,
Province of Quebec,
District of Quebec:

In the Superior Court, the 6th Day of June, 1901.

(# 1070.)

J. B. CLOUTIER

vs.

THE TREMBLAY HEIRS & ÆTNA INS. Cop., *Mise-en-cause.*

Proof of the Part of the Plaintiff in This Case.

Present: The Honorable — — —.

CAMILLE GUAY, agent of the Ætna Ins. Coy., in the Dist. of Quebec, of Quebec, aged 43 years, being duly sworn on the Holy Evangelists, deposes & says:

I know the parties in this case; I am neither a relative, nor an ally; nor servant, nor domestic of any of them; I am not interested in the result of these proceedings.

You know Mr. Cloutier?

Yes sir.

You remember Jean Ovide Tremblay, deceased at Quebec the 21st of January last?

Yes sir.

Will you refer to exhibit A of the plaintiff at the inquest, & tell us of Jean Ovide Tremblay who is mentioned, is the same person as the defendant in this case?

It is the same person.

This policy was issued by your Company, the Ætna Life Insurance Company, at Quebec?

Yes sir.

Was this policy of insurance transferred in September 1885, to the "Societe de Construction Permanente de Quebec" by the said late Jean Ovide Tremblay & the mise-en-cause, Arthemise D. Tremblay?

Yes, sir, as it appears by the transfer annexed to the said insurance policy.

And, in September 1891, will you state to whom it was transferred.

To Mr. Jean Baptiste Cloutier, the plaintiff in this case, the 24th day of November, as it appears by the exhibit K of the plaintiff at the inquest. Since the decease of Mr. J. O. Tremblay, Notary Pampalon produced at the office of the Company which I represent, the Aetna Insurance Company, a copy of the document, exhibit D; of the plaintiff at the inquest by which the mise-en-cause, Arthemise D. Tremblay, declares that the said policy of insurance, exhibit A, is at present transferred to the plaintiff in this case until concurrence of the sum of \$1614, & to Patrick F. Tremblay, the sum of \$345.49, & authorized the Company which I represent to pay these amounts in consequence.

Why did you not pay in conformity with transferrment?

Because we were notified by the said Patrick F. Tremblay not to pay. We deposited the amount in the hands of the Treasurer of the Province.

I see that the policy is of \$2000, please say why you did not deposit the \$2000?

The policy is of \$2000, the premium on the policy was payable the 13th of August, the issue of the policy, but to aid the insured the Company had divided the premium in two semi-annuals, one of which was payable Aug. 13 & the other Feb'y 13. Mr. Jean Ovide Tremblay died in January 1901, the Company had right to the premium due the 13th of Feb'y, 1901, it deducted it from the amount of the policy \$2000 & we deposited \$1959.49, in conformity with the law relative to deposits made in the Treasury.

Will you refer to Exhibit C of the plaintiff at the inquest, & tell us by who the premiums mentioned in the said statement were paid?

To my personal knowledge the plaintiff, Jean Baptiste Cloutier paid the premiums due on the said insurance policy, from Feb'y 13, 1892 until Aug. 13, 1900, the said dates inclusive. As to the premiums of Feb'y 13, 1891, & of Aug. 13, 1891, the policy was then detained by the "Societe de Construction Permanente de Quebec." It is possible that the plaintiff may have paid to the society, & that it was the society itself who paid us.

I undersigned, stenographer, certify that the foregoing is the exact translation of my stenographic note, & have signed.

(Signed)

J. B. MARTEL.

True Copy.

N. FORTIER, *Dep. P. S. C.*

In the Superior Court, etc., etc., etc.

* * * *Proof of the Part of the Plaintiff in this Case.*

Alphonse Cote, of Quebec, in the District of Quebec, Accountant, aged 50 years, being duly sworn on the Holy Evangelists, deposes & says:

I do not know the parties in this case, etc. etc. etc. * * *

You are the Treasurer of the "Societe de Construction Permanentes de Quebec," Mr. Cote?

Yes sir.

Will you take knowledge of exhibit A of the plaintiff at the inquest, & tell us if that policy of insurance had been transferred by late Mr. Jean Ovide Tremblay & Mrs. Arthemise D. Tremblay, for the guarantee of a loan to the "Societe de Constructions Permanentes de Quebec"?

Yes sir.

You know Mr. Cloutier, the plaintiff in this case?

Yes sir.

Will you take knowledge of the receipt, exhibit L of the plaintiff at the inquest & tell me by whom the sum of \$13.02 was paid, Feb'y 13, 1891 & for what purposes?

I see that it is one of the receipts of the "Societe de Constructions Permanentes de Quebec," by which it appears that the 13th of Feb'y, 1891, the plaintiff paid, on account of insurance policy of late J. O. Tremblay, \$13.02. This receipt is signed by Mr. Godfroid Gourdeau then Secretary of the said "S. de C. P. de Q.," & now deceased. As to the payments of Aug. 13, 1891, I have made no search in my books, but I remember that Mr. Jean Baptiste Cloutier came to the office to pay \$42.02, to pay insurance premiums for J. O. Tremblay.

I, undersigned, stenographer, etc. etc.

(Signed)

J. B. MARTEL.

True copy.

N. FORTIER, *Dep. P. S. C.*

In the Superior Court, etc., etc., etc.

Mr. Francois Laroche, civil employee, of Quebec, in the Dist. of Quebec, aged 50 years, being duly sworn, etc. etc. etc.

Please take communication of exhibit D, of the plaintiff at the inquest, appearing to be a copy of a declaration-transfer, of which the original is deposited in the treasure department "branch of the auditor of the province, & certified by Mr. A. H. Verret?

I am the attache of the treasury department "branch of the auditor of the Province, in quality of special officer." I have at present in my possession the papers among which is the original of the exhibit D, I cannot deposit this original, which should remain in the possession of the department, but I have just established by the collation of the said exhibit D with the original at present in my hands, that it is a copy in conformity. I have also in my possession the following receipt of the treasurer.

PROVINCE OF QUEBEC, April 9, 1901.

Voluntary Deposit.

Received from the Ætna Insurance Company the sum of nineteen hundred and fifty dollars, forty-nine cents \$1959.49, being deposit by the said company, on the life of J. O. Tremblay, of Quebec, under article 1196 R. S. P. Q. Union Bank at Quebec, the 9th day of April, 1901.

(Signed)

GEORGES E. POSTON.

I, undersigned, stenographer, etc. etc.

(Signed)

J. B. MARTEL.

True copy. One marginal note, good.

N. FORTIER, *Dep. P. S. C.*

In the Superior Court, etc., etc., etc.

J. B. Cloutier, Professor in retreat, of Quebec, in the Dist. of Quebec, aged 69 years, being duly sworn on the Holy Evangelists deposes & says:

I know the parties in this case. The plaintiff in this case.

I am the plaintiff in this case. I loaned to late Jean Ovide Tremblay the sum of \$541 the 16th of August, 1889, as appears by exhibit B of the plaintiff at the inquest, the said late J. O. Tremblay was then the debtor of the "Societe de Constructions Permanentes de Quebec" for a loan made, & had transferred jointly with his wife, the mise-en-cause, Arthemise D. Tremblay, the insurance policy, exhibit A of the plaintiff at the inquest. The act of obligation, exhibit B, was consented to me by the said Dame Arthemise D. Tremblay, as representing her husband, & the insurance policy then detained by the "S. de C. P. de Quebec" was transferred to me by the said exhibit B, in guarantee of the loan which I was then making of the said sum of \$541, & the interests. Subsequently Mrs. Arthemise D. Tremblay as it appears by the letter of the 20th July, 1890, marked exhibit M of the plaintiff at the inquest, asked

73 me for her & her husband to see to the payment of the insurance premiums of the said policy, seeing that it was impossible for them to do so, & I was myself interest-, as assignee of the said policy, I paid at the life of the said late J. O. Tremblay, & the said Arthemise D. Tremblay, the insurance premiums on the dates & for the amounts mentioned in the exhibit C of the plaintiff to the inquest; the 2 first viz., that of Feb'y 13, 1891, for \$13.02, & that of Aug. 13, 1891, for \$42.02; I paid them myself to the "Societe de Construction Permanentes de Quebec," who then detained the policy; and the other subsequent premiums up to August 13, 1900, inclusively, I paid them myself at the office of the Ætna Life Ins. Co., the mise-en-cause. I paid the amounts mentioned in the said exhibits C, & for premiums of the insurance exhibit A, & I have never been reimbursed of same, nor of the interests on the said premiums advanced by me. It was agreed that the interest

should be paid on the said premiums. The said late Jean Ovide Tremblay died at Quebec the 21st January last, owing me, as well as the mise-en-cause, Arthemise D. Tremblay, for insurance premiums aforesaid, as well as the interest on same, \$1001.65, plus the sum of \$541 in capital & \$344.60 in interest, in all \$885.60 due by virtue of the act of obligation, exhibit B of the plaintiff to the inquest.

The 19th of March, 1890, I since loaned & advanced to the said late Jean Ovide Tremblay, at his demand, different sums mentioned in the exhibits N & O of the plaintiff at the inquest, leaving due to me \$54.89 on the advances made the 19th March, 1890, & \$76 for advances made the 16th of June, 1890. These advances of the 19th of March, 1890, & of the 16th of June of the same year, & the loans which I then made, were to cover, at the demande of the said late J. O. Tremblay deficits in his accounts with the Treasury Department.

Thus the receipt of the 16th of June 1890, signed E. E. Tache, ass't-commissioner, was to cover an amount which the said
74 J. O. Tremblay was in deficit toward the Government. The 27th of November, 1891, Mrs. Arthemise D. Tremblay, the wife of the same J. O. Tremblay received from me, as it appears by the note, exhibit P of the plaintiff at the inquest, the sum of \$25 mentioned in paragraph 9 of the declaration; the initials A. G. are of Mr. Augustin Gaboury, now deceased. The defendants & the said mise-en-cause owe me for insurance premiums and interest on same, as it appears by the exhibit C of the plaintiff to the inquest, \$1001.65. By virtue of exhibit B., act of obligation of Aug. 16, 1889, \$541. in capital & \$344.60 of interest—in all \$885.60, furthermore the sum of \$54.89 & that of \$76 & that of \$25 mentioned in paragraph 8 & 9; in all \$2018.39 apart from other sums which I did not judge it proper to claim in the present case, because not having any other money to pay me than the insurance policy, it was useless for me to claim all that was due,

After the decease of the said Jean Ovide Tremblay I had occasion to speak to the insurance agent & to notary Pampalon, representing the Aetna Life Insurance Company. It was concerning the settlement of my account as it is alleged in the action by arrangement, & to avoid costs. I was ready to limit my claim for the sum of \$1614. Then notary Pampalon had the mise-en-cause sign the declaration & transfer, copy of which is produced as exhibit D of the plaintiff at the inquest, but the defendant, Patrick F. Tremblay not desiring to agree, the insurance company was obliged to deposit the sum which it had to pay, in the Treasurer's Office in execution of the insurance policy, exhibit A of the plaintiff at the inquest, & I was obliged to take the present action; but before I had Patrick F. Tremblay written to hoping that he would save me from taking an action. Which I was obliged to do because he did not wish the amicable settlement which I had accepted.

75 I, undersigned, stenographer, etc., etc.

(Signed)

J. B. MARTEL.

(True copy.)

(26 words erased, null.)

N. FORTIER,
Dep'y P. S. C.

This is a translation of the annexed French document.

ALPHONSE REED.

76

DEFT. EX. 12.

H. W. O.

(Translation.)

In the Superior Court, the 8th Day of June, 1901.

CANADA,

Province of Quebec, District of Quebec:

Present: The Hon. Judge L. B. Caron.

#1070.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentlemen,
Plaintiff,

vs.

THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During His Life-time
of the Town of Chicoutimi, Surveyor, the said Heirs Residing at
Lewiston, Me., U. S. A., Defendants.

The Ætna Life Insurance Company, of Hartford, Conn., U. S. A.,
and Having Its Business Office in this Province in the City of
Quebec.; Dame Arthemise Dumais, Widow of the said Jeane
Ovide Tremblay, and Patrick F. Tremblay, These Latter Two of
Lewiston, Me., U. S. A., "Mise-en-cause."

The said Patrick F. Tremblay, Furthermore, one of the Defendants
Aforesaid, "Mise-en-cause."

The Court having examined the Procedure & the proof on record,
& heard the Plaintiff by his lawyers, on the merit Ex Parte, the
present case having been inscribed for proof & hearing at the same
time.

Maintains the present action consequently adjudges & condemns
the defendants to pay to the plaintiff the sum of \$2018.39, with in-
terest from the 23rd of April last, & the costs. Furthermore de-
clares that the Plaintiff as assignee of the said insurance policy on
the life of the said Jeane Ovide Tremblay, #149296, issued by the
Ætna Ins. Co., "mis-en-cause," has a right to the amount deposited
in the Treasury Department, which shall be handed over to him

upon presentation of the present Judgment, the whole with costs against the Defendants alone.

True copy.

N. FORTIER,
D. P. S. C.

This is a translation of the annexed French document.
ALPHONSE REED.

77

DEFT. Ex. 13.

[SEAL.]

H. W. O.

\$25.00.

QUEBEC, 27, *Novbre*, 1891.

A demande Pay to the Order of La Societe de Construction Permanente Vingt-cinq Dollars Value received and charge the same to account of A. M. J. B. Cloutier.

(Signed)

J. O. TREMBLAY.
Par ARTH. D. TREMBLAY.

Quebec.

Endosse: C. S. No. 1070, Cloutier vs. Tremblay. Pièce P. du demandeur à l'enquête. Filed Jun- 6/1901. G. P. D. P. S. C.

[Stamp.]

PRAIE COPIE.
ALPH. BOISSONNEAULT,
Dep. P. C. S.

78

DEFT. Ex. 14.

(Translation.)

H. W. O.

CHICOUTIMI, *July* 20, 1890.

J. B. Cloutier, Esq., Quebec.

SIR: I have just received by the mail a notice from the Building Society that it refuses to pay the insurance on the life of my husband; it is really unfortunate to be thus tired by the Society; do they then wish to make us stop, I suppose they would like to place us so that we would be unable to pay, so as to seize our property. They do not consider that in making us discontinue paying the life insurances, that they would make us lose all that which we have given, & you who have \$1000 for guarantee if we lost that. I pray you to kindly see to it, you know how it is, they are to pay these insurances with the monies of the month of July & which you the payments that shall be made for the life will be remitted to you after the reimbursement of the money which you have already loaned us.

In these times, we need economy in view of our arrears, but not

to be pushed as does the Building Society. The Building Society has nothing more to do than to take \$15 a month, the rest should be remitted to you and it is for you to make them do the thing for your guarantees & for us. As regards the monies loaned, please be good enough to do that for us? By that you will put us in a position to get a good surveyorship for my husband, which would put us in a position to pay our debts.

As concerns the politics, those who say that my husband was against the candidate of the Government are mistaken that Mr. Cote had been supported by the Government, my husband was a candidate & worked for himself, from the time Mr. Cote 79 made himself known, as being the one who had the support of the Prime Minister, then my husband withdrew from the fray & worked for Mr. Cote, for a proof of the thing, as soon as Mr. Cote shall have returned from Quebec, we shall get a certificate from his hand which we shall send you, more than that, it seems to me that Mr. Louis Philippe Pelletier known enough to say that Mr. Tremblay supported the Government's Candidate, it is even Mr. Tremblay who represented Mr. Cote at the Polls & voted for him, if that is not sufficient to have it understood that he supported Cote, I do not know what means we should take to get there.

Henry will go & see Mr. Cote Wednesday & Saturday you will know all about that.

Your very humble servant,

(Signed)

ARTH. D. TREMBLAY.

Endorsed: C. S. 1070, Cloutier vs. Tremblay. Exhibit M. of the plaintiff. Filed June 6, 1901. G. P.—D. P. S. C.

True copy.

ALPH. BOISSONNEAULT,

Dep. P. S. C.

This is a translation of the annexed French document.

ALPHONSE REED.

80

DEPT. EX. 15.

PROVINCE OF QUEBEC,
District of Quebec:

In the Supreme Court.

#1070.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

THE HEIRS OF JEAN OVIDE TREMBLAY, Late of the Town of Chicoutimi, Surveyor, said Heirs Residing at Lewiston, Maine, United States of America, Defendants,

and

THE ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, United States of America, Having Its Office in This Province, in the City of Quebec; Madama Arthemise Dumais, Widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, These Two Last Being of Lewiston, Maine, United States of America, Made Parties to the Case, Mis'en-cause, the said Patrick F. Tremblay, Furthermore One of the Aforesaid Defendants, Mise-en-cause.

The said heirs of the late Jean Ovide Tremblay and Madame Arthemise Dumais, widow of the said Jean Ovide Tremblay and Patrick F. Tremblay of Lewiston, Maine, U. S. A., hereinbefore named and designated are ordered to appear in one month from the last publication of the present order. (Five words erased.)

ED. L. BURROUGHS,
Dept. P. C. S.

Office of the Prothonotary, Quebec, April 25, 1901.

ROBITAILLE & ROY,
Pro Dem.

81

DEFT. EX. 16.

H. W. O.

(Translation.)

CANADA,

Province of Quebec, District of Quebec:

In the Superior Court.

#1070.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During His Lifetime
of the Town of Chicoutimi, Surveyor, the said Heirs Residing at
Lewiston, Maine, U. S. R., Defendants,

&

THE ÆTNA LIFE INSURANCE COMPANY OF THE CITY OF HARTFORD,
Conn., U. S. A., & Having Its Business Office in This Province, in
the City of Quebec; Dame Arthemise Dumais, Widow of the said
Jean Ovide Tremblay, & Patrick F. Tremblay, These Latter Two
of Lewiston, Maine, U. S. A., Appellee, the said Patrick F.
Tremblay, Furthermore One of the Defendants Aforesaid, Ap-
pellee.

I, Louis T. Poitras, sworn bailiff of the Superior Court for the
Prov. of Quebec, named for the district of Quebec, residing in the
City of Quebec, certify by the present, on my oath of office, that the
23rd day of April, 1901, between 4 & 5 o'clock P. M., I personally
signified the present summons & demand & declaration thereto an-
nexed, on the Ætna Life Insurance Company, of the City of Hart-
ford, Conn., U. S. A. & having its office in this Province at Quebec,
at its business office at Quebec, speaking with a reasonable person
in charge of the said office, the agent at Quebec of the said appellee
therein named, delivering to him then and there a true certified
copy of the said brief & declaration thereto annexed; & I noted on
the back of such copy the date of the present signification.

I certify furthermore, that the 23rd day of April inst. 1901, I
took the necessary steps to have signified the present brief on the
heirs of late Jean Ovide Tremblay, to Dame Arthemise Dumais,
widow of Jean Ovide Tremblay, & Patrick F. Tremblay, but that I
could not reach them because these latter have no domicile, or resi-
dence, or place of business in the Province of Quebec, but
82 both reside in Lewiston, Maine, U. S. A.

I furthermore certify that the distance from the place of

the summons to the Court House, is less than one mile, & that the distance from my domicile to the place of the summons is more than one mile.

I furthermore certify that my fees & disbursements amount to the sum of 75 cents, as hereafter detailed.

Quebec, April 23, 1901.

(Signed)

LOUIS T. POITRAS, B. S. C.

Signification50

Transportation . . .25

.75

True copy.

ALPH. BOISSONNEAULT,
Dep. P. S. C.

The foregoing is translation of the annexed French document.

ALPHONSE REED.

83

Revised Statutes of the Province of Quebec.

ARTICLE 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer.

ARTICLE 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant.

It is admitted that the amount due under the policy was paid to J. B. Cloutier by the Treasury Department on June 25th, 1901.

True copies of exhibits.

Attest:

I. W. HANSON, Clerk.

84

[Endorsed:] Patrick F. Tremblay vs. Aetna Life Ins. Co. Exhibits, etc. Patrick F. Tremblay, Oakes, Pulsifer & Luden, for Plaintiff. Ralph W. Crockett, for Defendant.

85

PATRICK F. TREMBLAY
vs.
ÆTNA LIFE INSURANCE COMPANY.

Androscoggin.

Opinion, June 26, 1903.

(97 Maine, 547.)

Sitting: Wiswell, C. J., Strout, Savage, Powers, Peabody, Spear, JJ.

SPEAR, J.:

This is an action of debt to recover the amount alleged to be due upon a life insurance policy. On August 13, 1885, the Ætna Life Insurance Company of Hartford, Connecticut, issued a policy through its Canadian branch on the life of Jean O. Tremblay of the Province of Quebec, in the sum of \$2000, payable at his death to his wife Arthemise D. Tremblay, or in event of her death before his, to his executors, administrators, or assigns. On November 24, 1891, this policy was assigned by Jean O. Tremblay, without the joinder of his wife, to J. B. Cloutier of Quebec as collateral security. On January 14, 1901, Jean O. Tremblay and Arthemise D. Tremblay executed two other assignments of the same policy to their son Patrick F. Tremblay of Lewiston, Maine, the plaintiff in this case. A duplicate of but one of these assignments was forwarded to the Company. This assignment was made upon the company's blank form and is as follows: "For value received, we hereby transfer, assign and turn over unto Patrick F. Tremblay, Attorney at Law and Notary Public of Lewiston, Maine, as collateral, all our right, title and interest in Policy of Life Insurance 149,296, issued by the Ætna Life Insurance Company of Hartford, Connecticut, and all benefit and advantage to be derived therefrom to the extent of such interest as he may have when said policy becomes a claim, subject to J. B. Cloutier's claim.

Dated at Quebec this 14th day of January, 1901."

This assignment was duly executed and forwarded to the Company and its receipt acknowledged in a letter, as follows:

86

“ÆTNA LIFE INSURANCE COMPANY,
HARTFORD, CONN., *January 19, 1901.*

P. F. Tremblay, Esq., 256 Lisbon St., Lewiston, Me.

DEAR SIR: We have your favor of the 16th inst. enclosing an assignment of policy No. 149,296 on the life of Jean O. Tremblay, executed by said insured and Arth. D. Tremblay, in favor of yourself, under date of January 14, 1901 subject to the claim of J. B. Cloutier, which we place on file for such attention as it may deserve when such policy becomes a claim.

Yours truly,

J. L. ENGLISH."

The assignment was executed by both the assured and the only beneficiary, and consequently divested both of them of, and vested the assignee with, the entire legal interest in the policy, the exception to Cloutier being an equitable interest only, to which allusion will be made later.

J. O. Tremblay died January 21, 1901. At his death there was due on the policy \$1959.49. Proofs of death were filed accompanied by the affidavit of both J. B. Cloutier and P. F. Tremblay as assignees, and of Arthemise D. Tremblay as beneficiary. P. F. Tremblay in his affidavit claims "all but what is excepted by assignment between \$500 and \$1000." Arthemise D. Tremblay in her affidavit states that the policy was assigned to Cloutier as above stated and that the assignment is still in force; and also that a further assignment was made to her son January 14, 1901. Cloutier in his affidavit claimed the full amount due upon the policy. This dispute having arisen between the claimants, the company, in accordance with the Revised Statutes of the Province of Quebec, deposited the money due, in the office of the Provincial Treasurer, which exonerated the company from the payment of costs in any litigation which might arise upon the policy. All the claimants were properly notified of the deposit. On April 22, 1901, J. B. Cloutier commenced proceedings to secure the money thus deposited, in the Superior Court at Quebec, against the heirs of J. O. Tremblay, defendants, and Dame Arthemise Dumais, et al., *mise-en-cause*. The defendants and the Aetna Life Insurance Company, Arthemise Dumais Tremblay, widow, and Patrick F. Tremblay, these latter two of Lewiston, Maine, U. S. A., *mise-en-cause*, the said Patrick F. Tremblay furthermore, one of the defendants aforesaid, *mise-en-cause*, were condemned to appear at court on a day certain, and service on all these parties was made by publication. On the 8th day of June no appearance having been made by any of the defendants or by Arthemise Dumais Tremblay or Patrick F. Tremblay, the court upon an *ex parte* hearing rendered judgment for the plaintiff which was that it "maintains the present action, consequently adjudges and condemns the defendants to pay to the plaintiff the sum of \$2118.39, with interest from the 23rd day of April last and costs." It does not appear that any steps were taken to have administration upon the estate of Jean O. Tremblay and no administrator was mentioned in this suit, as the judgment shows. The plaintiff, notwithstanding the judgment rendered by the court at Quebec, has brought an action against the Aetna Life Insurance Company, in the Supreme Judicial Court for Androscoggin County, as assignee of the policy. To this action, the defendant interposes the following defenses:

1. The suit is brought in the name of the assignee the assignment not having been assented to by the Insurance Company.
2. The assignment is of a part of an entire sum.
3. The matter is *res judicata* and the plaintiff is bound by the record in the Canadian suit.
4. The evidence shows that the claim of J. B. Cloutier exceeds the amount due under the policy.

The plaintiff in reply controverts all of the above defenses and in addition asserts that, even if the Canadian judgment were in other respects valid, the claim of J. B. Cloutier as presented in the
88 Canadian suit, upon which the judgment was issued, was to a large extent clearly a fraudulent one.

The first matter of defense interposed, is to the right of the plaintiff to maintain his action on the ground that, being assignee of the policy and the assent of the company being required to make the assignment valid, the plaintiff had not, at the date of his action, secured such assent. Such objection cannot prevail. The letter of the Company, acknowledging the receipt of the assignment, was a sufficient indication of their assent. The assignment was upon a printed blank prepared and furnished by the company. The assignors, by their assignment, conveyed to the assignee "to the extent of such interest as they may have when said policy becomes a claim." The acknowledgment of the receipt of the assignment was "for such attention as it may deserve when said policy becomes a claim." The language of acknowledgment is as broad as the language of the assignment. The assignment became a claim upon the death of Jean O. Tremblay. What did the company mean when they wrote the assignee that they had placed the assignment on file? That it was an act of dissent? What, when they said that, upon its becoming a claim, they would give it such attention as it deserved? That it was invalid and hence entitled to no attention? Did they intend to convey to the plaintiff the idea that his assignment, after they had written him this letter, was invalid? If they did, they were very unfortunate in their form of expression, for it must necessarily have operated as a complete deception upon his mind. If it was their intention to decline to accept the assignment, they could easily have made their purpose clear. It cannot be possible that they so intended. It would be a contradiction of terms to hold that they did. On the other hand, construing the phraseology of their letter "according to the common meaning of the language" and no violence will be done in evolving the conclusion that, placing the assignment on file, and agreeing when the occasion arose, to give it due consideration, operated as an express acceptance. Nothing seems to be wanting to clothe their conduct with the idea of consent. We think the language used by the defendant company in acknowledging the receipt of the assignment was not only sufficient in its terms
89 but intended by the company to convey their consent to the assignment. But consent is held to effectuate a new contract with the assignee.

Grant vs. Eliot and Kittery Mutual Fire Insurance Company, 75 Maine, 196, is a case in which the widow of the owner succeeded to the title of the premises insured under his will. Later she conveyed all her right, title and interest in the premises to Mark A. Libby and on the same day by written assignment made over to said Libby the policy of insurance issued to Hiram R. Roberts, her husband in his lifetime, and the directors of the company indorsed their consent to the assignments. Still later Mark A. Libby conveyed the premises to the plaintiff and on the same day assigned the same policy to him,

and the directors of the defendant company indorsed thereon their consent to this second assignment. The court, p. 204, say: "The defendants were paid for insuring a given sum to Hiram R. Roberts for a fixed term, and their contract was to pay to his assigns. By consenting to the assignment made by his executrix and devisee to her grantee, Libby, they agreed that Libby might be substituted and that the policy should represent to him just what it had to the party originally insured. The same thing was done when Libby conveyed the property and assigned the policy to the plaintiff. No element of a valid and binding contract between the plaintiff and defendant seems to be wanting." *Donnell v. Donnell*, 86, Maine, 518, is a case in which Kingsbury Donnell owned certain real estate with buildings thereon upon which he procured two policies of insurance. Later he conveyed his real estate to his sons and on the same day assigned to them the insurance policies. The court say, p. 522: "The conveyance would have rendered the contracts of insurance with Kingsbury Donnell null and void if the companies had not consented to the assignment of the policies. The effect of this transaction was to make a new and original contract of indemnity with the assignees who were not indebted to the plaintiff and had no contract relations with him." "The assent of the company to the assignment was a renewal of the original contract to the assignee with

90 all its force, effect and liabilities as well as *well as* its conditions and limitations." *Biddeford Savings Bank v. Dwell-ing-House Insurance Company*, 81 Maine, p. 571. The same doctrine obtains in Massachusetts. "The policies are in terms payable to the assured and his assigns. The assignments to the plaintiff, assented to by the insurers, transfered to him the legal title in the policies and the right to sue thereon." *Burroughs v. State Mutual Life Assurance Company*, 97 Mass. p. 360. "But we are of opinion that the assignments of the policy, with the express consent of the defendants, enables the assignees to sue on it in their own name; that such consent to the assignments operates as a promise to pay the loss to them." *Kingsley v. New England Mutual Fire Insurance Company*, 8 Cush. 400.

The second matter of defense is that the assignment is a part of an entire sum. This defense is based upon the clause in the assignment "subject to J. B. Cloutier's claim." There is no question but the assignment, if not modified by this clause, conveyed the entire legal interest in the policy to Tremblay, the assignee. Unless the clause attaches to the assignment the legal modification, it can have no effect. The mere statement that it was subject to a claim if in fact there was no claim, would be surplusage. This leads us to the consideration and determination of the validity in law of Cloutier's alleged assignment. The policy in question was made payable to Arthemise Dumais Tremblay, wife of the assured. It is well settled in this State that this policy being payable to her became a vested right. *Small v. Jose*, 86 Maine, p. 124. Neither the Company, the husband nor the creditor could deprive her of it without her consent. *National Life Insurance Company v. Haley*, 78 Maine, p. 268, 272, 57 Am. Rep. 807. Applying these principles to the assignment of

Cloutier and it becomes evident that it was entirely inoperative to vest in him any legal interest as the beneficiary did not join in the assignment. But the defendant claims that the assignment, though not signed by the wife, is of such an equitable character as to vest in him an interest that will be protected and enforced by a court at law; but *Palmer v. Merrill*, 6 Cush. 282, 286, 52 Am. Dec. 91 782, holds that "in order to constitute such an assignment two things must concur," the second of which is, "the transfer shall be of the whole and entire debt or obligation, in which the chose in action consists, and as far as practicable place the assignee in the condition of the assignor to receive the full debt due and to give a good and valid discharge to the party liable." The record clearly shows that Mrs. Tremblay did not assign to Cloutier her "whole and entire" interest in the policy. It may be however, that, although she did not join in the assignment, she had by her acts conveyed to Cloutier an equitable interest which the assignee holds in trust for his benefit and which may be enforced by proceedings in equity. *Unity Mutual Life Assurance Association v. Dugan*, 118 Mass. 219; *Burroughs v. State Mutual Life Assurance Company*, 97 Mass. 359; *National Life Insurance Company v. Haley*, 78 Maine, 268, 57 Am. Rep. 807; *Duffy v. Metropolitan Life Ins. Co.*, 94 Maine, 418. Cloutier therefore had no interest, by virtue of his alleged assignment, which he could enforce in law, hence the phrase, "subject to J. B. Cloutier's claim" did not affect the capacity of the assignment to effect a transfer of the entire legal interest in the policy to P. F. Tremblay.

The third defense offered is, that the whole matter is *res judicata*. "It has been repeatedly adjudged, that foreign judgments are *prima facie* evidence merely of the right and matter which they purport to decide." *McKim v. Odom*, 12 Maine, p. 94. This doctrine has been repeated by our courts, from the time it was above promulgated to the opinion of *Tourigny v. Houle*, 88 Maine, 406. Upon foreign judgments "the merits as well as the jurisdiction of the courts which rendered them may be inquired into." *Middlesex Bank v. Butman*, 29 Maine, p. 23. This opens to inquiry the validity of the Quebec judgment. The record of the case, showing the proceedings and judgment in the court at Quebec, discloses, upon inspection, that the plaintiff's complaint, corresponding to our declaration, was based entirely upon the evidence, and the assumed validity, of Cloutier's assignment; the judgment followed the complaint, hence was 92 necessarily based upon the assignment; but we have already determined that the assignment, claimed by Cloutier, was invalid in law; therefore the judgment based upon the assignment was also invalid, there being no proof of facts upon which it was founded, and "a verdict and judgment are conclusive by way of estoppel only as to facts, without the existence and proof or admission of which they could not have been rendered." *Hill v. Morse*, 61 Maine, p. 543.

Upon another ground the proceedings, if not tainted with intentional fraud, operated as such upon the honesty of the judgment. The complaint, item 14, sets out that "the plaintiff (Cloutier) is

regular assignee of the aforesaid policy, assignment being made to him by the late J. O. Tremblay and his wife, the said *mise-en-cause*." Without this allegation Cloutier set out no cause of action whatever. But the statement is not true. The assignment was not executed by the wife. It was signed by J. O. Tremblay only. It was therefore not made by the wife, as alleged in the complaint or declaration. The allegation operated as a fraud upon the court and was well calculated, especially in the case decided *ex parte*, without personal notice and upon default, to deceive it. Nor was the assignment filed with or assented to by the Insurance Company. The law invoked to defeat the validity of Tremblay's assignment, for want of consent, applies with force with respect to the validity of Cloutier's assignment. The case shows that it was neither signed by the wife nor consented to by the company, as required by the policy, to make it a valid assignment. "In all judgments by default, whatever may be their competency or regularity, every proceeding, indeed, from the writ and endorsements thereon down to the judgment itself, inclusive is part of the record and is open to examination." *Penobscot R. R. Company v. Weeks*, 52 Maine, 460. "And the records of all courts are liable to be impeached if it can be done by inspection alone." *Ib.* 459. The judgment was upon default, but it is well settled that a default does not admit allegations in the complaint of fraud extrinsic to the cause of action." *American Encl. of Law*, vol. 5, 466.

93 "The acts and recitals of a court not having acquired a jurisdiction, cannot be conclusively binding on him; nor can acts and recitals be conclusive evidence of facts which would give them jurisdiction." *Carleton v. Bickford*, 13 Gray, p. 591, 596, 74 Am. Dec. 652. No more can a false statement in the declaration give jurisdiction.

Therefore the plaintiff, in the case at bar, did not admit by default, even if proper service had been made upon him, the untrue allegation set out in the declaration of Cloutier's writ. Nor did the proof presented to the Court at Quebec sustain the allegation. It was evident, upon inspection of the proof offered, that Cloutier's alleged assignment was not executed by Tremblay's wife, and that her agreement to transfer a part of her interest in the policy, as collateral security, was not in law, even an equitable assignment of her right. Hence there being no legal proof of the allegation set out in the declaration, that the assignment was made by the wife, the Quebec judgment was not founded upon the evidence of any legal claim, and therefore void.

"And if the judgment is wrongfully obtained by a fraud between the parties for the purpose of defeating the title of a third party, the latter may plead the matter in avoidance of a judgment. If the judgment has not been obtained by collusion with the debtor or with any fraudulent design, yet if it was unlawfully recovered to the injury of a third person, who cannot reverse it from error in being a party thereto, he can avoid it in the same manner." *Caswell v. Caswell*, 28 Maine, p. 237. "If, upon these facts, the judgment appears to be fraudulent against the creditors, any creditor on whom it is a fraud may give them in evidence." *Pierce v. Jack-*

son, 6 Mass., p. 244. Apply these principles to the proceedings before the court at Quebec and we think the judgment there rendered, even upon the ground of fraud, is not entitled to be considered *res judicata* against the right of the plaintiff to have his case determined on its merits.

There is still another reason why the proceedings at Quebec are not *res judicata*. "No court can rightfully render judgment in a cause until it has acquired complete jurisdiction over the parties, the subject matter of the suit, and the process."

94 Penobscot R. R. Company v. Weeks, 52 Maine, p. 458. "But the records of all courts are liable to be impeached if it can be done by inspection alone; and if such inspection discloses want of jurisdiction over the person of the defendant, the judgment will be void against him for that purpose." *Ib.* p. 439. "If the record negative the jurisdiction, or if it had not been extended, and the original papers do so, then the supposed judgment is void." *Tourigny v. Houle*, 88 Maine, p. 408. "Where it appears by the record itself that there was no appearance and no notice which he was bound to attend to, the judgment against him is a dead letter beyond the territory in which it was pronounced." *Middlesex Bank v. Butman*, 29 Maine, p. 25. Under these decisions the plaintiff in the present case is not bound by the proceedings in Quebec. No legal service of the writ was made upon him. He was a resident of a foreign country and the plaintiff knew his residence and alleged it in his writ to be in Lewiston, Maine, U. S. A. Service of the writ was by publication. The writ, declaration, summons, publication, default and judgment were against the heirs of Jean O. Tremblay, defendants, giving no name or names. Such a writ and such a service would not give our courts jurisdiction upon which a valid judgment could be rendered in *personam*.

Nor would the proceedings upon their face furnish a basis for a judgment in *rem*, even if we assume that the statutes of the Province, or the *lex rei sitae*, are the same as our own. By our statutes a judgment in *rem* can be entered only against the property of the debtor certain lines excepted. *Plurede v. Le Vasseur*, 89 Maine, 172. P. F. Tremblay was not the debtor; therefore no valid judgment in *rem* could be entered against the insurance money, in the hands of the Provincial Treasurer of which he held a legal title. The Quebec court therefore had no jurisdiction over the plaintiff Tremblay in *personam* or in *rem*, and could not render a binding judgment. The Revised Statutes of the Province of Quebec applying to this case and made a part of the exhibits are as follows: "Art. 1198. Whenever

95 any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay in the office of the Provincial Treasurer." "Art. 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into Court as a tender, to withdraw his

deposit, before the same shall have been demanded by the claimant." There is no evidence in this case that the receipt was registered or that the money had been paid into court as a tender. The company, therefore, had full power and ample opportunity, being a party to the proceedings, even after the judgment was rendered, to fully protect itself against any doubt of the legality of the Quebec proceedings by withdrawing its deposit from the treasury. Although having a full knowledge of all the transactions of Cloutier and P. F. Tremblay with respect to their claimed assignments, and of the conditions imposed by themselves in order to make an assignment valid, together with a presumed knowledge of the law, yet they stood by and allowed the proceedings of Cloutier to be consummated without the slightest intervention. It would not be a great strain upon the imagination, under the circumstances in this case, to read between the lines of these proceedings the subtle goodwill of the company contributing to the result attained. They can neither legally nor morally complain of the fall of the Quebec judgment. The case was reported with the stipulation, "if the law court is of opinion that the action is maintainable, it shall render such judgment as the rights of the parties require." The action is maintainable. In accordance with the stipulation,

Judgment for the plaintiff for \$1959.49, and costs, and interest from April 21st, 1901, ninety days after the death of the insured.

96 [Endorsed:] Patrick F. Tremblay vs. *Ætna Life Insurance Co.* Opinion. 97 Maine, 547.

97 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE COMPANY

vs.

PATRICK F. TREMBLAY and ARTHEMISE D. TREMBLAY.

Ralph W. Crockett, Attorney for Plaintiff.

Patrick F. Tremblay, Oakes, Pulsifer & Ludden, Attorneys for Defendants.

98 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE COMPANY

vs.

PATRICK F. TREMBLAY and ARTHEMISE D. TREMBLAY.

Ralph W. Crockett, Attorney for Plaintiff.

Patrick F. Tremblay, Oakes, Pulsifer & Ludden, Attorneys for Defendants.

To the Supreme Judicial Court. In Equity:

The *Ætna Life Insurance Company*, a corporation duly chartered and located in Hartford in the State of Connecticut, complains

against Patrick F. Tremblay and Arthemise D. Tremblay, both of Lewiston, in the County of Androscoggin and State of Maine, and says:

I. That on the thirteenth day of August 1885, it issued a policy No. 149,296 through its Canadian branch on the life of Jean O. Tremblay, of St. Francois Xavier, County of Chicoutimi, Province of Quebec, in the sum of Two Thousand Dollars, payable at his death to his wife, the said Arthemise D. Tremblay, or in the event of her death before his, to his executors, administrators or assigns.

II. That on the twenty-fourth day of November, 1891, said policy was assigned by said Jean O. Tremblay to one Jean B. Cloutier of Quebec by an instrument in writing in the following terms, to wit:

“For value received, I hereby transfer, assign, and turn over
99 unto J. B. Cloutier, of Quebec, Canada, as collateral, all right,
title and interest in Policy of Life Insurance No. 149,296
issued by the Ætna Life Insurance Company, of Hartford, Conn.,
and all benefit and advantage to be derived therefrom, to the extent
of such interest as he may have when said Policy becomes a claim.

Dated at Lewiston this 24th day of November 1891.

J. O. TREMBLAY. [L. s.]

Witness:

NAZAIRE LAYETTE.

STATE OF MAINE,

County of Androscoggin, ss:

On this 24th day of November, 1891, before me, the undersigned, appeared J. O. Tremblay personally known to me, and acknowledged the execution of the above instrument.

[SEAL.]

ADDISON SMALL,
Notary Public.”

III. That on or about said twenty-fourth day of November said policy was delivered to the said Cloutier, in whose hands it remained until after the death of the said Jean O. Tremblay.

IV. That prior to said assignment to said Cloutier said Arthemise D. Tremblay, acting under a power of attorney from her said husband executed with said Cloutier a certain instrument in writing, known as a notarial act, in the following terms, to wit;

(*Translation.*)

“The year 1889, the 16th day of the month of August, appeared before the undersigned N. P. for the Prov. of Que., residing in the City of Quebec,

Jean Ovide Tremblay, of the Town of Chicoutimi, Esq., surveyor and Crown Lands agent, represented and acting to the presents
100 by Dame Arthemise Dumais, his wife, according to power of attorney passed before Mr. Thomas Z. Cloutier notary, at Chicoutimi, the 13th August instant.

Which said Mr. Tremblay, acting as aforesaid, has acknowledged and confessed to owe well and legitimately to Jean Baptiste Cloutier, residing in the City of Quebec, Esq., Professor at the Laval Normal School, present and accepting creditor, for him, his heirs and assigns, viz., the sum of \$541, for a like amount loaned to the said debtor, as this latter, acting as is said, acknowledges same, of which acquittance.

Which said sum the said debtor promises to give back and pay to the said creditor or his legitimate representatives, as follows, viz., in 22 monthly payments, of which 21 of \$25 and 22nd and last payment of \$16. the 1st of each month, the 1st of which shall be due and exigible the 1st month, 1891, and thus on every month until the final reimbursement of the said sum.

To insure the reimbursement of this sum, the said J. O. Tremblay transfers to the said Mr. Cloutier, like sum of \$541 payable at the aforesaid epochs, on the salary which he draws from the Crown Lands Dept., as agent of Lands for the Division of Chicoutimi which sum shall be paid at the aforesaid epochs by the "Societe de Construction Permanente de Quebec," if it still draws at that time the salary of the said J. O. Tremblay, as it does at present, or by the Crown Lands Dept., if the said society of construction then no longer draws that salary.

And in the case of the decease of the debtor, the said Society of Construction shall pay from the amounts which it shall receive in payment of the insurance policies on the life of the said J. O. Tremblay which have already been transferred to it, the said sum of \$541. on all balances which may remain due on said sum. And if the said Society should give back to him the said policies of insurance, the said J. O. Tremblay pledges himself to transfer them to the said Mr. Cloutier at his first request.

101. It is agreed that if the said J. O. Tremblay should change situations, he should give to the said Mr. Cloutier a draft on the new salary attached to this new situation, for a sum equal to that which shall then be due to the said Mr. Cloutier, as much by virtue of the present as by virtue of all other acts previous to this one.

Which act, done and passed in the city of Quebec, office of Mr. Paul Emile Duval, notary, undersigned, the day and year aforesaid, under the number 1384 of his minutes. In faith of which the appearers have signed with us, notary, after reading,

(Signed)

A. D. TREMBLAY.

J. B. CLOUTIER.

P. E. DUVAL, N. P."

V. That at the request of the said Jean O. Tremblay and his said wife, Arthemise D. Tremblay, said Cloutier paid the premiums on said policy according to following schedule:—

| | |
|---------------|-------|
| 1981. Feb. 13 | 13.02 |
| Aug. 13 | 42.02 |
| 1892. Feb. 13 | 42.02 |
| Aug. 13 | 41.54 |
| 1893. Feb. 13 | 41.54 |
| Aug. 13 | 41.05 |

| | | |
|-----|---------------|--------------|
| 102 | 1894. Feb. 13 | 41.05 |
| | Aug. 13 | 40.56 |
| | 1895. Feb. 13 | 40.56 |
| | Aug. 13 | 40.06 |
| | 1896. Feb. 13 | 40.06 |
| | Aug. 13 | 39.57 |
| | 1897. Feb. 13 | 39.57 |
| | Aug. 13 | 39.08 |
| | 1898. Feb. 13 | 39.08 |
| | Aug. 13 | 38.59 |
| | 1899. Feb. 13 | 38.59 |
| | Aug. 13 | 38.10 |
| | 1900. Feb. 13 | 38.10 |
| | Aug. 13 | 40.51 |
| | | <hr/> 774.67 |

VI. That on the fourteenth day of January 1901, said policy was assigned by the said Jean O. Tremblay and the said Arthemise D. Tremblay to the said Patrick F. Tremblay, by an instrument in writing in the following terms, to wit:

"For value Received, We hereby transfer, assign, and turn over unto Patrick F. Tremblay, Attorney at Law and Notary Public at Lewiston, Maine, as collateral, all our right, title, and interest in Policy of Life Insurance No. 149,296, issued by the Ætna Life Insurance Company of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim, subject to J. B. Cloutier's claim.

Dated at Quebec this 14th day of January, 1901.

J. O. TREMBLAY. [s.]

ARTH. D. TREMBLAY. [s.]

Witness:

JOS. LAPOINT.

JOSEPH BLOUIN.

DOMINION OF CANADA,

City of Quebec, ss:

On this 14th day of January, 1901, before me, the undersigned, appeared Jean Ovide Tremblay personally known to me, and acknowledged the execution of the above instrument.

[N. P. SEAL.]

ALPH. DUMAIS."

VII. That said assignment to the said Patrick F. Tremblay was forwarded to your complainant and its receipt acknowledged in a letter as follows:

103

ÆTNA LIFE INSURANCE COMPANY,

HARTFORD, CONN., *January 19, 1901.*

P. F. Tremblay, Esq., 256 Lisbon street, Lewiston, Maine.

DEAR SIR: We have your favor of the 16th inst. enclosing an assignment of policy No. 149296 on the life of Jean O. Tremblay exe-

cuted by said insured, and Arth. D. Tremblay in favor of yourself under date of Jan. 14, 1901, subject to the claim of J. B. Cloutier, which we place on file for such attention as it may deserve when the policy becomes a claim.

Yours truly,

J. L. ENGLISH."

VIII. That on said fourteenth day of January, said Jean O. Tremblay and said Arthemise D. Tremblay executed another assignment to the said Patrick F. Tremblay by an instrument in writing in the following terms, to wit:

(Translation.)

Number 607.

Before Mr. Alphonse Dumais, N. P., in and for the Prov. of Que., residing in the City of Quebec, undersigned.

Was present Jean Ovide Tremblay, residing in the said City of Quebec, Esq., surveyor.

Who has this day sold, assigned and transferred to Patrick F. Tremblay, of the town of Lewiston, Me., one of the U. S. A. Esq., lawyer and notary public, here present and accepting, purchaser, for him, his heirs and assigns, viz.,

All the right, title and interest which the seller may have in the life ins. policy No. 149296, issued by the Aetna Life Ins. Co., of Hartford, Conn., as well as all the benefits and advantages resulting

therefrom after the diverse sums really and legitimately due
104 by the said seller to Jean Baptiste Cloutier, of the City of Quebec, gentleman, and of which the reimbursement is guaranteed by diverse notarial acts of obligation, shall have been paid to the said J. B. Cloutier.

This sale made by the said seller to the said purchaser for good and valid consideration, and furthermore for and in consideration of the price of \$25, which the said seller declares, to have had and recovered from the said purchaser of which acquittance.

By means of which, the seller divests himself of that which is above sold and vests the said purchaser with same that he may enjoy, make and dispose of same as it shall seem good to him.

To these presents intervened Dame Arthemise Dumais, wife of the said Jean Ovide Tremblay, whom he specially authorized to the effect of same.

Who, after having had a reading of the said act of sale by the said notary, has been agreeable to it, and consents that it should be executed according to its form and tenor, and furthermore renounces as much for herself as for her heirs, authorized as aforesaid, to all the interests which she might have had in the said insurance policy after the decease of the said J. O. Tremblay, if she should have survived him.

And for the execution of the presents, etc.

Which Act, No. 607.

Done and passed at Quebec aforesaid, the year 1901, the 14th day

of January, requested to sign the parties as well as the said intervening party, have done so with us, said notary, after reading.

(Signed)

J. O. TREMBLAY.

P. F. TREMBLAY.

ARTH. D. TREMBLAY.

ALP. DUMAIS, N. P."

IX. That said Jean O. Tremblay died at Quebec on the twenty-first day of January, 1901. At his death there was due on
105 said policy the sum of One Thousand Nine Hundred and Fifty-nine Dollars and Forty-nine Cents. Proofs of death were filed accompanied by the affidavits of said Cloutier and the said Patrick F. Tremblay as assignees and of said Arthemise D. Tremblay as beneficiary. Said Cloutier in his affidavit claimed the entire amount due under the policy and filed with the affidavit an itemized account of his claim, the total aggregating \$2,560.85. The said Patrick F. Tremblay in his affidavit claimed "All but what is excepted by assignment being between \$500 and \$1,000" and stated the nature of his claim to be "Cash and disbursements to be made or already made including funeral expenses." Said Arthemise D. Tremblay in her affidavit stated that the policy "was assigned to Jean Baptiste Cloutier of Quebec, on the 24th day of November, 1891, and said assignment is still in force. A further assignment was made in favor of P. F. Tremblay, Att'y at Law of Lewiston, Maine, January 14, 1901."

X. That after the death of said Jean O. Tremblay a dispute arose between the said Cloutier and the said Patrick F. Tremblay relative to the true amount of the former's claim, said Cloutier claiming that his claim exceeded the entire amount due on the policy, and the latter claiming that it amounted to a much less sum. They not being able to agree on the amount due said Cloutier, your complainant took measures to protect itself and have the matter legally determined.

XI. That on the 9th day of April, 1901, your complainant deposited in the office of the Provincial Treasurer of the Province of Quebec said sum of One Thousand Nine Hundred and Fifty-nine Dollars and Forty-nine Cents in accordance with Articles 1198 and 1199 of the Revised Statutes of the Province of Quebec, which provide as follows:

106 "Article 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer.

Article 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant."

All claimants of said money had proper notice of this deposit.

XII. That on the twenty-second day of April 1901, said Cloutier

commenced proceedings in the Superior Court of Quebec to obtain the money thus deposited, and on the eighth day of June, 1901, the Court entered judgment awarding to said Cloutier said entire amount due on said policy.

XIII. That on the twenty-fifth day of June, 1901, said amount of One Thousand Nine Hundred and Fifty-nine Dollars and Forty-nine Cents was paid to said Cloutier by said Provincial Treasurer.

XIV. That by making said deposit and by allowing said money to be paid to said Cloutier on said judgment, your complainant acted in good faith, believing that it was thereby fully protected, and further believing that said judgment was a full and complete bar to any and all proceedings which might be instituted against it on account of said policy.

XV. That on the twenty-second day of May, 1901, the said Patrick F. Tremblay, brought suit against your complainant in the
107 Supreme Court of this State as assignee under said policy.

Said action was duly entered in court, assigned for trial and reported to the Law Court under the following agreement, to wit:

"By agreement of parties this case is reported to the law court upon so much of the foregoing evidence as is competent and legally admissible. If the law court is of opinion that the action is maintainable it shall render such judgment as the rights of the parties require."

XVI. That there was introduced in evidence in said suit a certain memorandum of agreements and admissions made to be used in the trial of said suit and duly signed by the attorneys for both parties said memorandum being marked "Dft. Ex. 1." Paragraphs VII, VIII, and IX of said memorandum are as follows:

"VII. It is admitted that Jean B. Cloutier loaned Jean O. Tremblay the sum of Five Hundred and Forty-one Dollars (\$541.) on or before August 16th, 1889. This amount with interest on the same at the rate of six per cent. per annum from said date said Cloutier became entitled to receive from the proceeds of said policy No. 149296 when it became due and payable after the death of said Jean O. Tremblay, less any amounts paid to him on account of said loans.

VIII. It is admitted that at the request of the said Jean O. Tremblay and his wife, Arthemise D. Tremblay, said Cloutier paid the premiums on said policy, No. 149,296 according to the following schedule:

| | | |
|-----|---------------|-------|
| 108 | 1891. Feb. 13 | 13.02 |
| | Aug. 13 | 42.02 |
| | 1892. Feb. 13 | 42.02 |
| | Aug. 13 | 41.54 |
| | 1893. Feb. 13 | 41.54 |
| | Aug. 13 | 41.05 |
| | 1894. Feb. 13 | 41.05 |
| | Aug. 13 | 40.56 |
| | 1895. Feb. 13 | 40.56 |
| | Aug. 13 | 40.08 |
| | 1896. Feb. 13 | 40.06 |
| | Aug. 13 | 39.57 |

| | |
|---------------|--------------|
| 1897. Feb. 13 | 39.57 |
| Aug. 13 | 39.06 |
| 1898. Feb. 13 | 39.08 |
| Aug. 13 | 38.59 |
| 1899. Feb. 13 | 38.59 |
| Aug. 13 | 38.10 |
| 1900. Feb. 13 | 38.10 |
| Aug. 13 | 40.51 |
| | <hr/> 774.67 |

The above amounts with interest on the same at the rate of six per cent. per annum from the several dates of their payment as specified above, said Cloutier became entitled to receive from the proceeds of said policy when it became due and payable after the death of the said Jean O. Tremblay less any sum paid to him on account.

IX. It is admitted that Jean B. Cloutier loaned to Jean O. Tremblay the sum stated below and at the date specified. This amount with interest on the same at the rate of six per cent. per annum from said dates, less any amounts paid to him on account of said loan, were due to said Cloutier at the date of said Tremblay's death, but the plaintiff does not admit that said Cloutier became entitled to receive it from the proceeds of said policy.

1890. June 15th, 76.00."

XVII. That on the twenty-sixth day of June, 1903, the Law Court handed down an opinion in said suit containing the following order:

109 "Judgment for the plaintiff for \$1959.49 and costs, and interest from April 21st, 1901, ninety days after the death of the insured."

XVIII. That the said Arthemise D. Tremblay has always regarded and admitted said assignment to said Cloutier, executed on November 24th, 1891, to be valid and binding obligation and a lien on said policy and on the proceeds thereof, and that the said Patrick F. Tremblay has always so regarded and admitted said assignment.

XIX. That your complainant believes and has reason to believe and therefore alleges, that there was a large sum due said Cloutier at the death of said Jean O. Tremblay and which was intended by the said Jean O. Tremblay and the said Arthemise D. Tremblay to be secured by said assignment to said Cloutier. And that further, both the said Patrick F. Tremblay and the said Arthemise D. Tremblay have always admitted that there was a large sum so due and intended to be so secured.

XX. That your complainant is informed that the said Patrick F. Tremblay intends to enforce the order of said Law Court wherein judgment was awarded to him for \$1,959.49 and costs, and interest from April 21st, 1901, ninety days after the death of the insured.

XXI. That on the eleventh day of July, 1903, said Cloutier, by an instrument in writing, sold, transferred, assigned and set over

unto your complainant all his right, title and interest, both in law and in equity, in and to said policy and the proceeds thereof, in and to said assignment of said policy made to him by said Jean O. Tremblay on November 24th, 1891, in and to the debt or debts secured or intended to be secured by said assignment up to the amount
 110 due on said policy at or after the death of said Jean O. Tremblay, viz., \$1,959.49, whether said intention was expressed by the terms of said assignment to said Cloutier, or by the language or terms of certain assignments of said policy made by said Jean O. Tremblay and said Arthemise D. Tremblay, to said Patrick F. Tremblay under date of January 14, 1901, or by any act or acts, word or words, of said Tremblay's, or either of any of them, at, prior or subsequent to the date of said assignment to said Cloutier, and in and to any sum or sums hitherto paid by him on account of premiums on said policy, giving to said complainant, full power to enforce in law or in equity, in any manner it might deem expedient, either in his name or in its own name, but at its own cost, any and all of said rights, against said Patrick F. Tremblay, or against any other person or persons.

XXII. That your complainant has no plain, adequate and complete remedy at law.

Your complainant therefore avers that it is equitably entitled to have the amount due said Cloutier from said Jean O. Tremblay and intended to be secured and covered by said assignment to said Cloutier, as aforesaid, deducted from said sum of \$1,959.49, with interest, for which judgment has been ordered by said Law Court as aforesaid.

Wherefore your complainant prays this Honorable Court:

First. That this Court will issue its writs of injunction, both temporary and permanent against the said Patrick F. Tremblay, his servants, agents and attorneys, enjoining them and each of them from the further prosecution of said action of law, and from the enforcement and collection of said judgment and for the
 111 prosecution of any further action for the same cause until this court shall have determined the matters herein involved.

Second. That the amount due said Cloutier from said Jean O. Tremblay and intended to be covered and secured by said assignment to said Cloutier as aforesaid may be ascertained.

Third. That the said Patrick F. Tremblay may be ordered to deduct said amount of said Cloutier claim from the amount for which said Law Court has ordered judgment.

Fourth. That the amount due said Arthemise D. Tremblay from the proceeds of said policy, if any, may be determined.

Fifth. That your complainant may have such other and further relief as the nature of the case may require.

May it please this Honorable Court to issue its subpoena to the said Patrick F. Tremblay, and the said Arthemise D. Tremblay, commanding them to appear before this Court and answer to this bill of complaint, and abide the orders and decrees of Court thereon, and to also issue its temporary writ of injunction to restrain said

Patrick F. Tremblay as within prayed for, and that a hearing may forthwith be had on the first prayer hereof.

Dated this 14th day of July, A. D. 1903.

ÆTNA LIFE INSURANCE COMPANY,
By JOEL L. ENGLISH, *Secretary*.

RALPH W. CROCKETT,
Complainant's Solicitor.

STATE OF CONNECTICUT,
County of Hartford, ss:

14TH JULY, A. D. 1903.

Personally appeared Joel L. English above named, Secretary of said Ætna Life Insurance Company, and made oath that he has read the above bill and knows the contents thereof and that the same is true of his own knowledge, except the matters stated
112 to be on information and belief, and as to those matters he believes them to be true.

Before me,

FRANK W. BIDWELL,
Notary Public.

Certificate of Frank N. Bidwell as Notary Public attached.

Temporary injunction granted in accordance with the prayer of the bill.

[*Demurrer.*]

The Answer of Patrick F. Tremblay, With Demurrer Inserted Therein.

The defendant demurs to the plaintiff's bill, and for cause of demurrer shows,

1. That a legal representative of Jean O. Tremblay, deceased, is a necessary party to the plaintiff's bill, and that no executor, administrator or legal representative of said Jean O. Tremblay has been made a party thereto.

2. That, as fully appears by the plaintiff's bill, in the action of Patrick F. Tremblay v. The Ætna Life Insurance Company, in which judgment was rendered against said Company, and against which judgment said Company by its bill asks an injunction, said Company had full and complete opportunity to have the several matters set forth in its bill in equity determined, and by the proceedings in said suit is barred from maintaining its bill.

3. That the plaintiff has not stated such a case as entitles it to any relief in equity against this defendant.

Wherefore the defendant demurs thereto, and demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf wrongfully sustained.

The defendant answers to the plaintiff's bill, and says:

113 1. He admits the allegations in paragraph 1 of the plaintiff's bill.

2. He admits the allegations in paragraph 2 of the plaintiff's bill.

3. He admits the allegations in paragraph 3 of the plaintiff's bill.

4. He admits the allegations in paragraph 4 of the plaintiff's bill.

5. He admits the allegations in paragraph 5 of the plaintiff's bill.

6. He admits the allegations in paragraph 6 of the plaintiff's bill.

7. He admits the allegations in paragraph 7 of the plaintiff's bill, but says that plaintiff has not therein set forth the whole of the letter from the complainant to the said P. F. Tremblay, and that said letter further stated as follows: "We have on file no assignment to J. B. Cloutier, and we wish you would send us a duplicate of that transfer. We have, however, on file a collateral assignment in favor of the Quebec Permanent Building Association, and if the consideration for which this transfer was made has been satisfied, we will, on advice to that effect, send the papers for a proper release of said transfer."

8. He admits the allegations in paragraph 8 of the plaintiff's bill.

9. He admits the allegations in paragraph 9 of the plaintiff's bill, except the allegation that said Cloutier with his said affidavit filed an itemized account of his claim, the total aggregating \$2,560.85. As to this part of said paragraph, the defendant says he has no information as to said itemized account, except that said amount differs from the amount claimed by said Cloutier in his action begun in the Superior Court of Quebec on the twenty-second day of April, A. D. 1901, as stated in paragraph 12 of the

114 plaintiff's bill, and the plaintiff therefore denies the allegation with respect to said itemized account.

And the defendant further says that the proof of claim by Arthemise D. Tremblay was filed by her at the instance of the agent of said Company, and that she did not then and does not at the present time claim any part of the proceeds of said policy.

10. He admits the allegations in paragraph 10 of the plaintiff's bill.

11. He admits the allegations in paragraph 11 of the plaintiff's bill.

12. He admits the allegations in paragraph 12 of the plaintiff's bill.

13. He admits the allegations in paragraph 13 of the plaintiff's bill.

14. Said defendant denies that in making said deposit and allowing said money to be paid to said Cloutier on said judgment, said complainant acted in good faith; and denies that said complainant believed that it was thereby fully protected, and that said judgment was a full and complete bar to any and all proceedings which might be instituted against it on account of said policy. But said defendant further says that the complainant was fully informed as to said proceedings, and that its agent in Quebec took part in the same

as a witness for the said J. B. Cloutier, and said complainant knew and was conclusively presumed to know that said proceedings did not constitute a bar to the claim of this defendant.

And this defendant further says that said action was brought by said Cloutier, and said Company co-operated with said Cloutier, in assisting him to bring said action to a speedy judgment, and to cause the money due on said policy to be paid to said Cloutier before

the determination of the suit by this defendant, Patrick F. Tremblay, against said Company, which was then pending, in order to prevent this defendant, Patrick F. Tremblay, from having the case heard on its merits in his suit against said company, and in order that the proceedings in Quebec might be interposed as a bar to said action of the said defendant, Patrick F. Tremblay.

And this defendant further says that said Company collusively or negligently allowed an illegal judgment to be obtained by said Cloutier, and thereafter, notwithstanding it had full opportunity to withdraw its deposit from the Treasury of the Province of Quebec before the same was paid to said Cloutier, deliberately and wilfully allowed the same to be paid on said illegal judgment, notwithstanding suit had already been commenced and was pending against it in favor of said Patrick F. Tremblay, in which suit notice had been duly served upon said Company, and of which it was fully informed.

And this defendant further says that said Company might have fully protected itself against the claims of all parties by filing its bill of interpleader, or by pleading an equitable defense in the suit of said Patrick F. Tremblay under the provisions of the Revised Statutes of Maine, but that it wilfully and collusively neglected and refused so to do, in order that the illegal proceedings in said Court of Quebec in behalf of the said J. B. Cloutier might be upheld; all of which was contrary to good faith on the part of said Company.

15. He admits the allegations in paragraph 15 of the plaintiff's bill.

16. He admits the allegations in paragraph 16 of the plaintiff's bill.

17. He admits the allegations in paragraph 17 of the plaintiff's bill.

18. Said defendant admits that he and said Arthemise D. Tremblay have always regarded and admitted said assignment to

116 be a valid and binding obligation and a lien on said policy and the proceeds thereof, but only to the extent of the actual interest of said J. B. Cloutier upon a full and fair accounting by said Cloutier, which the defendant says he has never been able to obtain, and which said Cloutier by his suit above described and by his false and fraudulent pretences therein, deliberately attempted to prevent said Tremblay from obtaining.

And this defendant further says that prior to the assignment by the said J. B. Cloutier to said Company, as set forth in paragraph 21 of the plaintiff's bill, said Cloutier, by the act of said Company, had received full satisfaction of any claim which he might have had against the estate of Jean O. Tremblay; and that by its act in causing

said money due on said policy to be paid to said Cloutier as aforesaid, said company precluded itself from asserting any claim to said sum against said Cloutier, and from thereafter obtaining repayment of the same from said Cloutier or from any other party.

19. He admits the allegations in paragraph 19 of the plaintiff's bill.

20. He admits the allegations in paragraph 20 of the plaintiff's bill.

21. As to the several allegations in paragraph 21 of the plaintiff's bill, the defendant says that he has no knowledge as to the actual facts therein set forth, and denies the same; and further denies that the assignment set forth in said paragraph 21 is for any proper and valid consideration, and says that if the same has been obtained, as stated in plaintiff's bill, it has been obtained since the judgment by this defendant against said complainant and for the purpose of enabling said complainant to bring this bill in equity.

And the said defendant further says that at the time of said 117 alleged assignment, said Cloutier had no claim to said policy or the proceeds thereof, or against this defendant; but that if any claim had ever existed, it had been fully barred and extinguished by the payment to said Cloutier of the deposit made by said Company by the Provincial Treasurer of the Province of Quebec, in the manner set forth in the plaintiff's bill.

22. He denies the allegations in paragraph 22 of the plaintiff's bill.

23. The defendant, further answering, says that by the judgment of this defendant against said plaintiff, the said plaintiff is barred from maintaining its bill.

24. And the defendant further says that the said Arthemise D. Tremblay, by her assignment set forth in paragraphs 5 and 8 of the plaintiff's bill, parted entirely with all interest in said policy of insurance and in the proceeds thereof, and now has no interest therein, and should not be made a party to said bill.

Wherefore the defendant prays that the plaintiff's bill may be dismissed with costs.

PATRICK F. TREMBLAY,

By H. W. OAKES, *His Attorney*.

H. W. OAKES,

Solicitor for Defendant.

We certify that the above demurrer is filed in good faith, and is not intended for delay.

H. W. OAKES,

The Demurrer of the Defendant Arthemise D. Tremblay to the Bill of Complaint of the Aetna Life Insurance Company.

The defendant demurs to the plaintiff's bill, and for cause of demurrer shows:

1. That a legal representative of Jean O. Tremblay, deceased, is a necessary party to the plaintiff's bill, and that no 118 executor, administrator or legal representative of said Jean O. Tremblay has been made a party thereto.

2. That, as fully appears by the plaintiff's bill, in the action of Patrick F. Tremblay v. The Ætina Life Insurance Company, in which judgment was rendered against said Company, and against which judgment said Company by its bill asks an injunction, said Company had full and complete opportunity to have the several matters set forth in its bill in equity determined, and by the proceedings in said suit is barred from maintaining its bill.

3. That, as appears by said bill, this defendant Arthemise D. Tremblay, by the several assignments therein set forth, parted entirely with all interest in said policy of insurance and in the proceeds thereof, and is not a proper party to said bill.

4. That the plaintiff has not stated such a case as entitled it to any relief in equity against this defendant.

Wherefore the said defendant Arthemise D. Tremblay demurs thereto, and demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in this behalf wrongfully sustained.

ATHEMISE D. TREMBLAY,
By H. W. OAKES, *Her Attorney*.

H. W. OAKES,
Defendant's Solicitor.

I certify that this demurrer is filed in good faith and is not intended for delay.

H. W. OAKES.

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(*Replication.*)

And now comes the said Ætina Life Insurance Company and says that the allegations in its said bill are true, and that the allegations in the answer of the said Patrick F. Tremblay are not true.

ÆTNA LIFE INSURANCE COMPANY,
By RALPH W. CROCKETT, *Its Solicitor*.

Law on Report.

Counsel for Plaintiff introduces the following documentary evidence.

Policy, dated August 13, 1885, marked "Plff. Ex. A."

Assignment from J. O. Tremblay and Arthemise D. Tremblay to Patrick F. Tremblay, under date of January 14, 1901, marked "Plff. Ex. B."

Assignment from J. O. Tremblay and Arthemise D. Tremblay to P. F. Tremblay, under date of January 14, 1901, marked "Plff. Ex. C."

Letter from J. L. English to P. F. Tremblay, under date of January 19, 1901, acknowledging receipt of assignment, marked "Plff. Ex. D."

Notarial Act of August 31, 1888, for \$479, marked "Plff. Ex. E."
Memorandum of agreements and admissions used in the trial of

the suit of Patrick F. Tremblay v. The Ætna Life Insurance Co., marked "Plff. Ex. F." (Objected to. Admitted as admissions made at that time.)

120 Notarial Act of August 16, 1889, for \$541, marked "Plff. Ex. G."

Assignment of policy from J. O. Tremblay to J. B. Cloutier, under date of November 24, 1891, marked "Plff. Ex. H."

J. B. Cloutier's affidavit accompanying proof of death, to which is attached his account, marked "Plff. Ex. I."

Patrick F. Tremblay's affidavit accompanying proof of death, marked "Plff. Ex. J."

Arthemise D. Tremblay's affidavit accompanying proof of death, marked "Plff. Ex. K."

Judicial Deposit Receipt, marked "Plff. Ex. L."

Notice of Judicial Deposit, marked "Plff. Ex. M."

The declaration in the suit of Cloutier v. Tremblay, in the Superior Court of Quebec, dated April 22, 1901, with summary procedure, marked "Plff. Ex. N."

Motion for default, and same granted, dated April 25, 1901, also a certificate of default, dated June 3, 1901; marked "Plff. Ex. O."

Testimony of Camille Guay, Alphonse Cote, Francois La Roche and J. B. Cloutier, in the suit of J. B. Cloutier v. The Heirs of J. O. Tremblay et als. in the Superior Court of Quebec,—“Plaintiff's Ex. P.”

The judgment in said suit, dated June 8, 1901, marked "Plff. Ex. Q."

Order of notice by publication, marked "Plff. Ex. R."

Sect. 136 of the Code of Civil Procedure in the Province of Quebec relative to notice of publication; marked "Plff. Ex. S."

121 Return of Louis T. Poitras, Bailiff, in said suit of Cloutier v. The Heirs of J. O. Tremblay, dated April 23, 1901; marked "Plff. Ex. T."

Order of twenty-five dollars, from J. O. Tremblay, dated November 27, 1891; marked "Plff. Ex. U."

Letter from Arthemise D. Tremblay to J. B. Cloutier, dated July 20, 1890; marked "Plff. Ex. V." (Objected to. Admitted.)

Assignment from J. B. Cloutier to The Ætna Life Insurance Co., dated July 11, 1903; marked "Plff. Ex. W." Execution admitted. (Objected to. Admitted.)

ADMISSION.—Admitted that all of the foregoing evidence was introduced as a part of the suit of Tremblay v. The Ætna Life Insurance Co.

The record in Tremblay v. Ætna Life Insurance Co.; marked "Plff. Ex. Y." (Writ and pleadings not to be printed but once.)

The opinion in Tremblay v. Ætna Life Insurance Co.; marked "Plff. Ex. Z." May be referred to by either party without printing.

STIPULATION.—Either party may furnish a single copy of the printed evidence in the former case, which may be referred to as if taken for this case.

Deposition of J. B. Cloutier; marked "Plff. Ex. AA." Defendant objects to Question 25, and the answer.

Deposition of Amédée Robitaille; marked "Plff. Ex. BB."

Deposition of Camille Guay; marked "Plff. EEx. CC."

122 Deposition of Norman W. Trenholme; marked "Plff. Ex. DD."

Deposition of Frank W. Bidwell; marked "Plff. Ex. EE."

Defendant claims the right to introduce as his own evidence only such letters as he furnishes, notwithstanding they are produced and attached to the deposition in answer to his interrogatory.

Article 1200 of the Revised Statutes of the Province of Quebec, edition of 1888; "Plff. Ex. FF."

Defense.

Counsel for defense introduces the following documentary evidence:

"Deft. Ex. A." Extracts from Books of The Permanent Construction Society of Quebec, covering installments April 2, 1889, to Feb. 3, 1890, inclusive, total \$275; also from April 1, 1890, to January 3, 1891, inclusive, total \$405.

"Deft. Ex. B." Extracts from books of The Permanent Construction Society of Quebec, covering instalments from February 1, 1888, to March 2, 1889, total \$275.

"Deft. Ex. C." Extract from Ledger of the Lands of the Crown.

"Deft. Ex. D." Account J. O. Tremblay with J. B. Cloutier, showing balance \$2675.85.

"Deft. Ex. E." Account, first item of which is April 16, 1887, \$250.

ADMISSION.—It is admitted that "Plff. Ex. H" referred to in the testimony of Stanley Tremblay in the former case is the same as that marked "Deft. Ex. D." in this case.

123 MRS. ARTHEMISE D. TREMBLAY, defendant, called by her counsel, testified as follows:

(J. A. Chagnon, interpreter.)

Q. You are the widow of J. O. Tremblay?

A. Yes.

Q. At the time of your husband's death, January 21, 1901, where were you residing?

A. We were living in Quebec.

Q. How long did you continue to live in Quebec after your husband's death?

A. Eleven months.

Q. I show you paper marked "Deft. Ex. F." and ask you whether or not that is a statement in the handwriting of Mr. J. B. Cloutier?

A. Yes.

Q. And about when did you receive it?

A. It is dated the fourteenth day of February, 1892.

Q. State whether or not you received that by mail somewhere about the time of this date?

A. Yes, I received it by mail.

(Paper marked "Deft. Ex. F." put in evidence.)

Q. In Mr. Cloutier's account, there is a charge of \$25 loaned to you in 1891. Where were you when you received that money?

A. I was in Quebec.

Q. Had you previous to that time lived in Chicoutimi?

A. Yes.

Q. How long after you gave up your residence at Chicoutimi was it that you received this \$25?

A. About one month.

Q. After you received this \$25, whether or not you very soon came to Lewiston, Maine, to live?

A. One day after receiving the money.

Q. Did you ever after that time live in Chicoutimi?

124 A. No, I did not return to Chicoutimi.

Q. Had the house in Chicoutimi been sold by Mr. Cloutier before you came to Lewiston to live?

A. No.

A. About a couple of months.

Q. During the last days of your husband's life did Mr. Cloutier have any talks with him at your home?

A. Yes.

Q. In your presence?

A. Yes, sir.

Q. State whether or not your husband said anything to him about accounts between them?

A. Yes.

Q. State whether or not your husband asked him to go over the accounts with him?

A. My husband asked him if he had his life insurance policy in his hands.

Q. State whether or not your husband asked him to go over the accounts with him?

A. He asked him to settle.

Q. What did Mr. Cloutier say about it?

A. He did not want to. He said that all the affairs were all correct, and he did not want to do any more business with him.

Q. How long was that before your husband's death?

A. About four weeks.

Q. Was he then sick?

A. He was dying. The doctor had said that he had about four or five weeks to live.

Q. Did your husband say anything to Mr. Cloutier about the house which had been deeded to Mr. Cloutier?

A. He asked him if he wanted to settle the matters concerning the house with the other business. He said that everything was settled.

125 Q. Did you talk with Mr. Cloutier yourself about the house?

A. Yes, sir.

Q. When was that?

A. After his death.

Q. What did you say to him about the house, if anything?

A. I says, "I came up to settle with you about the house."

Q. What did he say about it?

A. He says, "I owe you nothing. I have no business with you."

Q. Would he make any more talk with you about it?

A. Yes, he did.

Q. Would he give you any account of the money?

A. No, not at all.

Q. After you came to Lewiston in the last part of 1891, did you ever afterwards live in Chicoutimi?

A. No.

Q. Did any of your family live in Chicoutimi after that?

A. No.

It is agreed that the document referred to in Mrs. Tremblay's testimony in the former case as "Plff. Ex. G." is the same as marked "Deft. Ex. C" in this case.

Cross-examination:

Q. At the time of your husband's death he was living in Quebec?

A. Yes.

Q. I show you "Deft. Ex. A.," Extracts from Books of Permanent Construction Society of Quebec, showing certain amounts, aggregating \$680, paid to J. B. Cloutier on the salary of the late J. O. Tremblay, or for him, do you know of your own knowledge on what accounts those amounts were paid?

A. It was paid to pay back the money borrowed from Mr. Cloutier.

126 Q. Do you know which loans it was to pay?

A. It is transfers or acts executed between my husband and Mr. Cloutier.

Q. Can you state what transfers or what notarial acts they were?

A. The first act was by the Notary Public, Belanger.

Q. State all that you know of your own personal knowledge about those payments?

A. I, by my own signature, authorized Mr. Cloutier to take a certain amount of the commissions earned by my husband from the government, also on his salary.

Q. Those are the ones paid by the Building Association?

A. All these amounts have been paid for money loaned of Cloutier.

Q. When was this money loaned?

A. At the present time I cannot tell exactly when it was.

Q. Tell as near as you can.

A. About 1888; by the first act made by Belanger, I think in 1888, and the other one in 1889.

Q. Made by what notary?

A. I do not remember the name. The last act was in the month of August, 1889.

Q. I show you "Deft. Ex. B." Extracts from the Books of Permanent Construction Society of Quebec, showing payments made to Mr. Cloutier on Mr. Tremblay's account, of \$275. State what you know about that.

A. Those are orders that I signed myself for the Society to pay Mr. Cloutier

Q. Is that all you know about it?

A. Yes.

Q. Were those orders drawn on account of money borrowed from time to time from Mr. Cloutier?

A. That money was paid on the contract of the notarial acts of money borrowed of Mr. Cloutier.

127 Q. You had borrowed, as agent for your husband, from time to time, several amounts of Mr. Cloutier?

A. I have borrowed from time to time money from Mr. Cloutier.

Q. About that time you frequently borrowed money from Mr. Cloutier on your husband's account, and acting as his agent?

A. I borrowed money of Mr. Cloutier, and on that account I have given him acts to cover it.

Q. You did this frequently, did you not?

A. You can see by the acts.

Q. Didn't you do it more than twice?

A. I borrowed quite frequently of him, but the whole thing coming to that first act was put into the first act made by Belanger.

Q. You did frequently borrow from Mr. Cloutier on your husband's account?

A. Yes.

Q. You always acted as your husband's agent?

A. Yes.

Q. I show you "Deft. Ex. C." Extract from the Ledger of the Lands of the Crown, in re. J. O. Tremblay and J. B. Cloutier, orders on commission, showing sums paid to J. B. Cloutier. State what you know about those amounts being paid.

A. I accept those amounts as being paid?

Q. What do you know about those amounts being paid?

A. I know that I paid them through orders. Some of those amounts were paid by authorization and some by orders on commissions.

Q. Who delivered this insurance policy to Mr. Cloutier?

A. It is the Building Society.

Q. Was that done with your knowledge?

A. I had given the order.

128 Q. You gave the order to the Construction Company to turn over the policy to Mr. Cloutier?

A. Yes.

Q. And he held this policy from that time until the death of your husband?

A. Yes.

Q. And you knew that your husband was making an assignment of this policy to Mr. Cloutier?

A. Yes.

Q. And this was in November 1891?

A. Yes.

Q. And you understood that that assignment was made to secure Mr. Cloutier for what money your husband owed him?

A. It was for collateral security.

Q. It was to secure him for money then owed and afterwards to be borrowed?

A. No; it was only for the amount due then.

Q. Then you understood that that assignment was to secure Mr. Cloutier for all sums which your husband owed him at that time?

A. I was giving him that for collateral security for money borrowed.

Q. Did you understand that that was to secure him for all moneys owed by your husband to him at that time?

A. Certainly; it was for his security.

Q. Did that include the \$25 borrowed by you in 1891?

It Is Agreed that the sum of \$25 borrowed in October or November, 1891, by Mrs. Tremblay, which appears in Mr. Cloutier's account, is properly chargeable to Mr. Tremblay, and may be treated like the amounts covered in the notarial acts.

Q. In borrowing this money from Mr. Cloutier you always acted as your husband's agent?

A. Yes.

129 Plaintiff offers paper marked "Plff. Ex. GG." Objected to as immaterial. Adm.

Plaintiff offers paper marked "Plff. Ex. HH." Objected to. Adm.

Plaintiff offers paper marked "Plff. Ex. II."

Redirect:

Q. While you were at Quebec, after your husband's death, did any agent of the Insurance Company come to you to get you to sign papers?

A. Yes.

Q. Who was it?

A. The first agent, Mr. Camille Guay.

Q. Did you sign an agreement to have the money on the policy paid partly to Mr. Cloutier and partly to your son Patrick?

A. No.

Q. How many times did Mr. Guay call on you?

A. Twice.

Q. What did he say to you about it?

A. He wanted me to sign it, telling me it was better for me to sign it. At first I did not want to sign it; I told him it was not mine, it belonged to my son.

Q. Did you afterwards sign?

A. I did not sign with him, but he sent his agent three times after that.

Q. You did sign with the other agents?

A. I did not sign with them. There came a Notary Public and he told me to sign, that he had received an authorization from my son Patrick.

Q. Did you then sign before the Notary?

A. I signed at that time.

Q. Who sent him to you?

130 A. He said that he was sent there by the Insurance Company.

(Objection noted.)

Q. Who was it that told you that he had authority from Patrick?

A. Mr. Camille Guay came to me and told me he had received a letter from Patrick, telling me was satisfied as long as I wanted to sign.

Q. Satisfied for what?

A. Mr. Camille Guay came to me and told me he had received a letter from Patrick stating that he was satisfied to have me sign as long as I wanted to sign.

Q. Satisfied for you to sign what?

A. To sign the paper so that the Company would pay Cloutier.

Q. Was the Company to pay Cloutier the whole of it, or a part?

A. The whole amount.

Q. Was Patrick to have any part of it? What did Guay say about that?

A. They offered \$400. It was to be \$400, but there was money due the Company that they were to take out.

Q. You referred to a notarial act of Mr. Belanger; that was the first one?

A. Yes.

Q. That was the \$479 one?

A. Yes.

Q. Was that in 1888?

A. Yes.

Q. The other was for \$541, before Notary Duval, and in 1889; is that as you understand it?

A. Yes.

Q. Were there any other notarial acts that were used to get money from Mr. Cloutier after the first one of those two, after the Belanger one?

131 A. Yes, one.

Q. Any others besides that one?

A. That was the last one.

Q. State whether or not the orders shown in "Deft. Ex. A," which I hand you, containing an extract from the books of the Society, for the amounts paid by the Permanent Construction Society of Quebec to Mr. J. B. Cloutier on the salary of the late J. O. Tremblay, or for him, were orders given by your authority and to your knowledge?

A. They were given by me by order of my husband.

Q. State whether or not the same thing is true in regard to the accounts shown on "Deft. Ex. B." which I show you, for orders from the same Society on the salary of Mr. Tremblay?

A. Just the same as the first.

Q. State whether the same thing is true in regard to the account shown on "Deft. Ex. C.," which I show you, orders on commissions of the Lands of the Crown?

A. Just the same thing.

Q. State whether or not these orders which you have told about

were given to be applied on these amounts covered by the notarial acts which have been referred to?

A. Yes, they were.

Recross-examination:

Q. Did you keep any account of what your husband owed to Mr. Cloutier?

A. No.

Q. And you have no account of what he owed?

A. It was all borrowed on acts.

Q. Have you any account of payments made by you or your husband, on your husband's account, to Mr. Cloutier?

A. No. Of the money I paid him, he never gave me any account. I gave the orders; he collected from the government.

132 Q. Did you keep any account of the payments made to Mr. Cloutier?

A. No, because the orders were signed by me and the money was paid by the government, and the government used to send me the receipts.

Q. You kept no books?

A. No.

Q. And all you know is what appears from the books of Building Society and the government?

A. Yes.

Q. Whenever you borrowed money from Mr. Cloutier, it was generally paid when it was due, wasn't it?

A. I don't know as to that. I used to give the orders, and he used to get his pay from the government.

Q. You didn't give him orders until the money was due from your husband, did you.

A. I always followed the acts, and paid the amounts through the government.

Q. The money was paid just when the acts specified it should be paid?

A. Yes.

Q. And not before?

A. I do not think so.

Redirect:

Q. In your examination in the other case, when you were inquired of about the \$541 act, you were asked, "Were payments on that contract to commence before the two years," and you answered, "He gave him orders on the government before the two years were up." You were also asked, "By the contract you understood that the payments were to commence about two years later," and your answer was, "Yes, it was to pay sooner." Will you tell what you mean to state to be the fact about the payments?

133 A. I gave orders, I think it was \$25 a month, to the government, and also to the Society: and I gave them an order to pay quicker.

Q. What do you mean by saying that you gave them orders to pay quicker?

A. It was understood in the act that I was to give so much. This was not in the act, but it was understood between him and me that I was to give him the \$25 a month I think, on the Construction Company, in order to pay him quicker.

Recross-examination:

Q. Do you remember when you gave the first order?

A. No, I do not remember about that, it has been so long.

Q. Have you any record of any orders that you gave?

A. No.

PATRICK F. TREMBLAY, defendant, called by his counsel, testified:

Q. Whether you had any talk with Mr. Camille Guay after the death of your father?

A. I never had any talk with Mr. Guay after the death of my father; I do not think I even saw him.

Q. How soon did you leave Quebec after your father's death?

A. The next day.

Q. Were your father's remains taken by you to Lewiston?

A. They were, the next day. I got some letters from him.

Q. Did you ever, verbally or otherwise, agree to a settlement by which Mr. Cloutier was to receive about \$1600 of the insurance money, and you were to receive the balance?

A. No; I refused to deal in that way.

134 Q. Did you ever, verbally or otherwise, authorize Mr. Camille Guay or any one else to go to your mother and tell her that you authorized such a settlement?

A. I did not.

Q. Did you ever have any conversation with Mr. Camille Guay in which you said you assented to the payment of something more, and would go as far as \$1600?

A. I never did speak to him anything of the kind.

Q. Did you ever ask him to see Cloutier in order to make him reduce his claim, and in case of success, to send you the Insurance Company's assenting form No. 7, which you were to sign and return immediately?

A. No.

Cross-examination:

Q. Were you with your father at the time of his death?

A. Yes, I was.

Q. How long had you been with him?

A. About three weeks.

Q. Had you talked over with him more or less his transactions with Cloutier?

A. Yes, some.

Q. Whether or not you knew pretty well how things stood?

A. As much as my father knew. He said he never could know anything about it from Cloutier.

Q. You talked it over with your father quite fully, didn't you?

A. That conversation could not be long, because my father did not know very much of his standing with Cloutier. He wanted me to find out from Cloutier.

Q. Had you talked it over quite a good deal with your mother?

A. Not much; some.

135 Q. You knew pretty well what your father and what your mother claimed in the matter, didn't you?

A. Well, they told me some.

Q. And you knew pretty well what their claim was?

A. They did not know themselves.

Q. You knew as far as they did?

A. Yes; they told me what they thought of it.

Q. I show you "Plff. Ex. JJ.," a letter purporting to be written by you to T. H. Christmas, dated January 25, 1901. Is that your signature?

A. Yes.

Q. I show you "Plff. Ex. KK.," purporting to be a letter written by you to T. A. Christmas, under date of January 31, 1901; is that your signature?

A. Yes.

Plaintiff introduces in evidence papers marked "Plff. Ex. JJ." and "Plff. Ex. KK."

Redirect:

Q. At the time you wrote the letters of January 25th and January 31st, had you had any time to investigate thoroughly the state of accounts between Mr. Cloutier and your father?

A. No.

Q. At the time you wrote those letters did you have any intention of waiving any rights which you might actually have on a complete settlement with Mr. Cloutier?

(Objected to. Adm.)

A. No, I did not. I was just getting some information, to find out about the standing of the accounts between my father and Cloutier. I was just inquiring to find out.

Q. Did you afterwards learn facts which led you to change your mind as to the condition of accounts between Cloutier and your father?

136 A. The more it went, the more I found out there should have been some payments credited to my father that I never had heard about, and I found out that the amount due me on the policy was higher, and that is what I wrote the Company. I found out that money coming to me was higher than I thought.

Recross-examination:

Q. You know, of your own personal knowledge, nothing about your father's transactions with Mr. Cloutier?

COURT: You did not know them at the time they took place?

A. No.

Q. You knew nothing about these payments?

A. I never knew anything about it at the time they were made. I knew Cloutier was receiving money by authorization.

Counsel for defendants introduces the following additional documentary evidence:

"Deft. Ex. G." Letter P. F. Tremblay to J. L. English, dated Feb. 28, 1901.

"Deft. Ex. H." Letter J. L. English to P. F. Tremblay, dated March 9th, 1901.

"Deft. Ex. I." Letter J. L. English to P. F. Tremblay, dated March 16th, 1901.

"Deft. Ex. J." Letter Oakes, Pulsifer & Ludden to Aetna Life Insurance Company, dated April 2, 1901.

"Deft. Ex. K." Letter J. L. English to Oakes, Pulsifer & Ludden, dated April 6th, 1901.

137 "Deft. Ex. L." Letter Oakes, Pulsifer & Ludden to Aetna Life Insurance Company, dated April 12th, 1901.

"Deft. Ex. M." Letter J. L. English, Sec., to Oakes, Pulsifer & Ludden, dated April 13th, 1901.

"Deft. Ex. N." Deed from J. B. Cloutier to William Boily, dated May 6, 1892.

Questions of law having arisen in this case, of sufficient importance to justify the same, and the parties agreeing thereto, the case is reported to the Law Court upon bill, answer, demurrers and proof, the Law Court to render such judgment, upon so much of the evidence as is legally admissible and competent, as the rights of the parties require.

If the Law Court is of opinion that the demurrers, or either of them, should be sustained for amendable defects, that Court may allow such amendments as could be allowed by a Justice at nisi prius.

PL'FF Ex. A.

R. W. C.

No. 149,296.

\$2000.

Aetna Life Insurance Company of Hartford, Connecticut.

Participating Policy.

Premium \$50.48.

This Policy of Insurance witnesseth, That the Aetna Life Insurance Company,

In Consideration of the representations and declarations made to it in the application for this Policy, and of the Semi-annual Premium of Fifty Dollars and Forty-eight Cents, to be paid to it in lawful funds of Canada on or before the Thirteenth day of August and February in each and every year during the continuance of this Policy,



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CARD 2

138 Does Hereby Insure the Life of Jean O. Tremblay (hereinafter called the insured), of St. Francois Xavier, County of Chicoutimi, Province of Quebec for the term of his natural life, In The Sum of Two Thousand Dollars; Payable in lawful funds of Canada at the office of said Company, in Hartford, Connecticut, to his wife Arthemise D. Tremblay, or in event of her death before his, to his executors, administrators, or assigns, within ninety days after satisfactory proof of the death of the said insured during the continuance of this Policy; any portion of the whole premium for the current year remaining unpaid, or any other indebtedness to said Company on account of this Policy, being first deducted therefrom.

This Policy is issued and accepted upon the following express conditions and agreements:

SECTION 4. Any assignment of this Policy shall be attached hereto, and a copy thereof furnished said Company; and any claim against this Company, arising under this Policy, made by any assignee, shall be subject to proof of interest; but in no case does the Company guarantee the validity of an assignment.

* * * * *

In Witness Whereof, the said Ætna Life Insurance Company has, by its President and Secretary, signed and executed this contract in the City of Hartford, and State of Connecticut, this Thirteenth day of August, 1885; but the same shall not be binding until countersigned by Jos. Grondin, Agent at Quebec.

H. G. BULKELEY, *President*.

J. L. ENGLISH, *Secretary*.

Countersigned at Quebec this Thirteenth day of August, 1885.

JOS. GRONDIN, *Agent*.

139

PL'FF EX. B.

H. W. O.

Form for Assignment to a Creditor.

To be attached to Policy No. 149296 upon the life of Jean Ovide Tremblay. A duplicate of the assignment should at the same time be forwarded to the Company.

For Value Received. We hereby transfer, assign, and turn over unto Patrick F. Tremblay, Attorney at Law & Notary Public of Lewiston, Maine, as collateral, all our right, title, and interest in Policy of Life Insurance No. 149296 issued by the Ætna Life Insurance Company of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim, subject to J. B. Cloutier's claim.

Dated at Quebec this 14th day of January 1901.

J. O. TREMBLAY. [s.]

ARTH. D. TREMBLAY. [s.]

Witness:

JOS. LAPOINT.

JOSEPH BLOUIN.

DOMINION OF CANADA,
City of Quebec, ss:

On this 14th day of January 1901, before me, the undersigned, appeared Jean Ovide Tremblay personally known to me, and acknowledged the execution of the above instrument.

[N. P. SEAL.]

ALPH. DUMAIS.

This acknowledgment should be executed before a Notary Public, or other officer using an official stamp seal, bearing his own name. Otherwise a certificate from the proper authority should be attached showing that he is duly authorized to administer oaths.

140

PL'FF EX. C.

H. W. O.

(*Translation.*)

No. 607.

Before Mr. Alphonse Dumais, N. P. in and for the Prov. of Que., residing in the City of Quebec, undersigned.

Was present Jean Ovide Tremblay, residing in the said City of Quebec, Esq., Surveyor.

Who has this day sold, assigned and transferred to Patrick F. Tremblay, of the Town of Lewiston, Me., one of the U. S. A., Esq., lawyer and notary public, here present and accepting, purchaser, for him, his heirs and assigns, viz.,

All the right, title and interest which the seller may have in the life ins. policy No. 149296, issued by the Ætna Life Ins. Co., of Hartford, Conn., as well as all the benefits and advantages resulting therefrom after the diverse sums really and legitimately due by the said seller to Jean Baptiste Cloutier of the City of Quebec, gentlemen, and of which the reimbursement is guaranteed by diverse notarial acts of obligation, shall have been paid to the said J. B. Cloutier.

This sale made by the said seller to the said purchaser for good and valid consideration, and furthermore for and in consideration of the price of \$25 which the said seller declares to have had and received from the said purchaser, of which acquittance.

By means of which, the seller divests himself of that which is above sold and vests the said purchaser with same that he may enjoy, make and dispose of same as it shall seem good to him.

To these presents intervened Dame Athemise Dumais, wife of the said Jean Ovide Tremblay, whom he specially authorizes to the effect of same.

Who, after having had a reading of the said act of sale by the said notary, has been agreeable to it, and consents that it
 141 should be executed according to its form and tenor, and furthermore renounces as much for herself as for her heirs, authorized as aforesaid, too the interests which she might have had in

the said insurance policy after the decease of the said J. O. Tremblay if she should have survived him.

And for the execution of the presents, etc.

Which Act, No. 607.

Done and Passed at Quebec aforesaid, the year 1901, the 14th day of January, requested to sign the parties as well as the said intervening party, have done so with us, said notary, after reading.

(Signed)

J. O. TREMBLAY.

P. F. TREMBLAY.

ARTH. D. TREMBLAY.

ALP. DUMAIS, N. P.

True copy of the minute held for record in my office.

ALP. DUMAIS, N. P.

This is a translation of the annexed French document.

ALPHONSE REED.

PL'FF Ex. D

ÆTNA LIFE INSURANCE COMPANY,
HARTFORD, CONN., Jan. 19, 1901.

P. F. Tremblay, Esq., No. 256 Lisbon St., Lewiston, Me. (Thro, T. H. Christmas.)

DEAR SIR: We have your favor of the 16th inst. enclosing an assignment of policy No. 149296 on the life of Jean O. Tremblay, executed by said insured, and Arth. D. Tremblay in favor of yourself under date of Jan. 14, 1901, subject to the claim of J. B. Cloutier, which we place on file for such attention as it may deserve
142 when the policy becomes a claim. We have on file no assignment to J. B. Cloutier, and we wish you would send us a duplicate of that transfer. We have, however, on file a collateral assignment in favor of the Quebec Permanent Building Society, and if the consideration for which this transfer was made has been satisfied, we will, on advise to that effect, send papers for a proper release of said transfer.

Yours truly,

J. L. ENGLISH.
B.

R. W. C.

PL'FF Ex. E.

In the year of our Lord one thousand eight hundred and eighty-eight, the thirty-first day of August.

In presence of P. Emile Belanger, Notary Public for the Province of Quebec, undersigned.

Have appeared Jean Baptiste Cloutier Esquire, professor, residing in the City of Quebec, party of the first part, and Jean Ovide Trem-

blay, esquire, surveyor, residing in the town of Chicoutimi, represented in the Presents by Cyprien Labreque of the City of Quebec, Esquire, Notary, his attorney duly authorized to the effect of the presents, in virtue of a power of attorney under private signature by the said Jean Ovide Tremblay at Chicoutimi the fourteenth day of August inst. and remained annexed to the presents after having been acknowledged true by said Cyprien Labreque et signed by him by said Notary ne varietur party of the other part.

Which have declared and acknowledged that follow, viz.,

That the said Tremblay Esquire owes yet to said Cloutier Esquire a balance of four hundred and seventy-nine dollars on the accounts carried to the following contracts and transfer viz. obligation and transfer made before A. Tremblay notary, the sixteenth day of April, one thousand eight hundred and eighty-seven.

143 Obligation and transfer before the said A. Tremblay notary the seventeenth day of May one thousand eight hundred and eighty-seven.

Transfer made before C. P. Sirois, Notary; the twenty-seventh May one thousand eight hundred and eighty-seven.

That the said Jean Baptiste Cloutier is authorized to receive of the Societe de Construction Permanente de Quebec the said balance of four hundred and twenty-nine dollars by monthly instalments of twenty-five dollars each.

That the said Jean Ovide Tremblay having asked from said Jean Baptiste Cloutier a delay for the payment of the said balance, and desiring to receive for his profits the said monthly instalments, to what the said Cloutier Esquire consents.

In consequence the said Cloutier Esquire for good and valuable considerations consents to that the said Tremblay Esquire receives of the Societe de Construction Permanente de Quebec, the said monthly instalments of twenty-five dollars each from now till the first day of April one thousand eight hundred and eighty-nine, and from that date the said monthly instalments of twenty-five dollars be payable to him the said Cloutier Esquire until the said balance of four hundred and seventy-nine dollars will be paid in full.

The said Tremblay agrees furthermore to pay to said Cloutier Esquire another sum of twenty-five dollars as indemnity immediately after the said capital sum herebefore will be paid, and thus sum will be payable in the same way that the capital sum heretofore, that is to say the said monthly instalments.

Made and passed at Quebec under the number five hundred and one in the undersigned notary's record.

I- witness whereof the contracting parties have signed with me notary, lecture given.

(Signed)

J. B. CLOUTIER.
CYPRIEN LABREQUE.
P. E. BELANGER.

144

PL'FF EX. F.

Memorandum of Agreements and Admissions to be Used in the Trial of the Suit of Patrick F. Tremblay vs. The Ætina Life Insurance Company Now Pending in the Supreme Judicial Court for the County of Androscoggin.

I. It is agreed that there was due on policy No. 149,296 issued by The Ætina Life Insurance Company on Life of Jean O. Tremblay the sum of One Thousand Nine Hundred and Fifty-nine Dollars and Forty-nine Cents (\$1959.49) at the time of his death on January 21, 1901 payable in ninety days after satisfactory proofs of death.

II. It is admitted that the defendant company on April 9, 1901, deposited said sum of \$1959.49 with the Treasury Department of Quebec, of which deposit all claimants of said money had notice. It is further admitted that such deposit was a proper procedure under the laws of Canada to protect said Company against costs in any action that might be brought against it by any party or parties over whom the Canadian Court has jurisdiction.

III. All papers marked with the initials "H. W. O." made by Henry W. Oakes or the initials "R. W. C." made by Ralph W. Crockett are to be received and admitted without proof of their execution and with the same effect as though they were original documents.

IV. The certified copies of the "Bref D'Assignment et Declaration" the "Proofs" and the "Judgment" in the suit of Jean Baptiste Cloutier vs. The Heirs of the Jean Ovide Tremblay et als. in the Superior Court for the Province and District of Quebec, all of which are marked with the initials "H. W. O." made by Henry W. Oakes are agreed to be a complete and proper copy of the record of the judgment in said suit.

V. No question is raised by the plaintiff as to identity of the subject matter in said Quebec suit and in this suit, nor as to the identity of the parties as far as they are named in both suits and in the various documentary evidence to be introduced in this suit.

VI. It is admitted that said Quebec suit was a proper procedure under the laws of Canada; that notice thereof was published in accordance with the order of Court; and that the Court in which the judgment was rendered was a Court of competent jurisdiction of the subject matter of said suit; But the plaintiff in this suit denies that said Court had any jurisdiction over him and claims that he is not in any way bound by said judgment.

VII. It is admitted that Jean B. Cloutier loaned to Jean O. Tremblay the sum of Five Hundred and Forty-one Dollars (\$541) on or before August 16th, 1889. This amount with interest on the same at the rate of six per cent. per annum from said date said Cloutier became entitled to receive from the proceeds of said policy No. 149,296 when it became due and payable after the death of said Jean O. Tremblay, less any amounts paid to him on account of said loans.

VIII. It is admitted that at the request of the said Jean O. Tremblay and his wife Arthemise D. Tremblay said Cloutier paid the premiums on said policy No. 149,296 according to the following schedule:—

| | | |
|-----|---------------|--------|
| | 1891. Feb. 13 | 13.02 |
| | Aug. 13 | 42.02 |
| 146 | 1892. Feb. 13 | 42.02 |
| | Aug. 13 | 41.54 |
| | 1893. Feb. 13 | 41.54 |
| | Aug. 13 | 41.05 |
| | 1894. Feb. 13 | 41.05 |
| | Aug. 13 | 40.56 |
| | 1895. Feb. 13 | 40.56 |
| | Aug. 13 | 40.06 |
| | 1896. Feb. 13 | 40.06 |
| | Aug. 13 | 39.57 |
| | 1897. Feb. 13 | 39.57 |
| | Aug. 13 | 39.08 |
| | 1898. Feb. 13 | 39.08 |
| | Aug. 13 | 38.59 |
| | 1899. Feb. 13 | 38.59 |
| | Aug. 13 | 38.10 |
| | 1900. Feb. 13 | 38.10 |
| | Aug. 13 | 40.51 |
| | | 774.67 |

The above amounts with interest on the same at the rate of six per cent. per annum from the several dates of their payment as specified above, said Cloutier became entitled to receive from the proceeds of said policy when it became due and payable after the death of the said Jean O. Tremblay less any sum paid to him on account.

IX. It is admitted that Jean B. Cloutier loaned to Jean O. Tremblay the sum stated below and at the date specified. This amount with interest on the same at interest at six per cent. per annum from said dates, less any amounts paid to him on account of said loan, were due to said Cloutier at the death of said Tremblay's death, but the plaintiff does not admit that said Cloutier became entitled to receive it from the proceeds of said policy.

1890. June 16th 76.00

Nothing in the foregoing agreements and admissions shall be construed as a waiver of the right of the plaintiff to introduce evidence of payments made to said Jean B. Cloutier on account of the indebtedness from said Jean O. Tremblay to him as specified above.

Nothing in the foregoing agreements and admissions shall be construed as a waiver on the part of the defendant of its right to impeach or attack said judgment in said Quebec suit, including evidence of credits mentioned above.

OAKES, PULSIFER & LUDDEN,
Attorneys for Plaintiff.
RALPH W. CROCKETT,
Attorney for Defendant.

H. W. O.

PL'FF EX. G.

(Translation.)

The year 1889, the 16th day of the month of August,
Appeared before the undersigned N. P. for the Prov. of Que., residing in the City of Quebec,

Jean Ovide Tremblay, of the Town of Chicoutimi, Esq., surveyor and Crown Lands agent, represented and acting to the presents by Dame Arthemise Dumais, his wife, according to power of attorney passed before Mr. Thos. Z. Cloutier, notary, at Chicoutimi, the 13th August instant.

Which said Mr. Tremblay, acting as aforesaid, has acknowledged and confessed to owe well and legitimately to Jean Baptiste Cloutier, residing in the City of Quebec, Esq., Professor at the Laval Normal School, present and accepting creditor, for him, his heirs and assigns, viz., the sum of \$541, for a like amount loaned to the said debtor, as this latter acting as is said, acknowledges same, of which acquittance.

Which said sum said debtor promises to give back and pay to the said creditor or to his legitimate representatives, as follows, viz., in 22 monthly payments, of which 21 of \$25 and 22nd and last payment of \$16 the 1st of each month, the 1st of which shall be due and exigible the 1st month, 1891, and thus on every month until the final reimbursement of the said sum.

To insure the reimbursement of this said sum, the said J. O. Tremblay transfers to the said Mr. Cloutier, like sum of \$541
148 payable at the aforesaid epochs, on the salary which he draws from the Crown Lands Dept., as agent of Lands for the Division of Chicoutimi, which sum shall be paid at the aforesaid epochs by the "Societe de construction Permanente de Quebec," if it still draws at that time the salary of the said J. O. Tremblay, as it does at present, or by the Crown Lands Dept., if the said society of construction then no longer draws that salary.

And in the case of the decease of the debtor, the said Society of construction shall pay from the amounts which it shall receive in payment of the insurance policies on the life of the said J. O. Tremblay which have already been transferred to it the said sum of \$541. on all balances which may remain due on said sum. And if the said Society should give back to him the said policies of insurance, the said J. O. Tremblay pledges himself to transfer them to the said Mr. Cloutier at his first request.

It is agreed that if the said J. O. Tremblay, should change situations, he shall give to the said Mr. Cloutier a draft on the new salary attached to this new situation, for a sum equal to that which shall then be due to the said Mr. Cloutier, as much by virtue of the present as by virtue of all other acts previous to this one.

Which act, done and passed in the City of Quebec, office of Mr.

Paul Emile Duval, notary, undersigned, the day and year aforesaid, under the No. 1384 of his minutes. In faith of which the appearers have signed with us, notary, after reading.

(Signed)

A. D. TREMBLAY.
J. B. CLOUTIER.
P. E. DUVAL, N. P.

(True copy.)

P. E. DUVAL.

149 (Endorsed:) No. 1384—Aug. 16, 1889.—Obligation: J. O. Tremblay, Esq., to J. B. Cloutier, Esq., 3rd. copy—copy \$1.50 C. S. No. 1070. Cloutier vs. Tremblay Heirs and Insurance Company. Exhibit B of the Plaintiff. P. E. Duval, N. P. Filed May 1, 1901, G. P. Dep. P. S. C.

True certified copy.

Quebec, Augusta 27, 1901.

N. FORTIER,
Dep. P. S. C.

This is a translation of the annexed French document.

ALPHONSE REED.

H. W. O.

PL'FF EX. H.

(Form for Assignment to a Creditor.)

To be attached to Policy No. 149,296 upon the life of ———.

A duplicate of the assignment should at the same time be forwarded to the Company.

For Value Received, I hereby transfer, assign, and turn over unto J. B. Cloutier, of Quebec, Canada, as collateral, all right, title, and interest in Policy of Life Insurance No. 149,296 issued by The Ætna Life Insurance Company, of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim.

Dated at Lewiston this 24th day of November 1891.

J. O. TREMBLAY. [L. s.]

Witness:

NAZAIRE LAYETTE.

STATE OF MAINE,

County of Androscoggin, ss:

On this 24th day of November, 1891, before me, the undersigned, appeared J. O. Tremblay personally known to me, and acknowledged the execution of the above instrument.

[SEAL.]

ADDISON SMALL,
Notary Public.

150 This acknowledgment should be executed before a Notary Public, or other officer using an official stamp seal, bearing his own name. Otherwise a certificate from the proper authority should be attached showing that he is duly authorized to administer oaths.

PL'FF Ex. I.

QUEBEC, January 7, 1901.

Mr. J. O. Tremblay, on Account with J. B. Cloutier.

1889.

| | |
|---|---------|
| March 19. Deficit on bill No. 3 paid by me to the government | \$54.89 |
| August 16. Loan to J. O. Tremblay on assignment of wages (Not. Duval) | 541.00 |
| August, 16. Fees paid to Notary Duval for deeds and legal notices | 10.00 |
| Fees for same. | |

1890.

| | |
|--|--------|
| June 16. Deficit on bill No. 4 paid by me to the government | 76.00 |
| April 30. Loan to H. A. Tremblay to pay his dues to the government | 100.00 |

1891.

| | |
|--|-------|
| Oct. 27. Money loaned to Mrs. J. O. Tremblay | 25.00 |
|--|-------|

1894.

| | |
|--|------------|
| January. Re Coloza Blair expenses of Court paid to Rob- taille & Roy | 44.00 |
| Interest on ten years on \$850.89 at 6 per cent. | 636.60 |
| Premiums and interest on 10 years at 6 per cent. on policy No. 149296 | 1,073.36 |
| | <hr/> |
| | \$2,560.85 |

151

H. W. O.

Affidavit Required from the Assignee.

- | | |
|---|---|
| 1. What is your full name and your age? | 1. Jean Baptiste Cloutier. Age 70. |
| 2. What is your residence (Town, County and Province)? | 2. Quebec, Co. and Prov. of Quebec. |
| 3. What was the full name, last legal residence (Town and Province,) and date of death of the deceased? | 3. Jean Ovide Tremblay, Quebec, Co. and Prov. of Quebec, Jan. 21, 1901. |

4. What is the number, date and amount of the policy or policies of life insurance issued by the Aetna Life Insurance Company on the life of the said deceased, under which you claim?

4. Number.
149296.
Date.
Aug. 13, 1885.
Amount.
\$2,000.

5. Was the insurance under said policy or policies assigned to you, and do you claim as such assignee?

5. Yes, said policy was assigned to me November 24, 1891, and I claim as assignee.

6. What amount do you claim?

6. The whole amount due under said policy No. 149296.

7. What was the nature and amount of the consideration for which the said insurance was assigned to you.

7. Several loans and all the prem's paid by me since 1891. My account is attached thereto.

8. Has said insurance, or any of it, ever been transferred or assigned by you? If so, give the names of any and all such assignees.

8. No.

152 7. (NOTE.—A full statement in detail of the amount and character of the indebtedness or other consideration should here be given.)

[SEAL.] (Signed) JEAN BAPTISTE CLOUTIER.

PROVINCE OF QUEBEC,

County of Quebec, ss:

Subscribed before me this twenty-sixth day of January, 1901, by Jean Baptiste Cloutier personally known to me, and who made oath that the foregoing statements and answers are true and full.

[SEAL.] THOS. N. W. PAMPALON, N. P.

Certified true copy Aug. 13, 1901.

A. H. VUNT, L. A.

PL'FF- Ex. J.

H. W. O.

Affidavit Required from the Assignee.

1. What is your full name and your age?

1. Name. Patrick F. Tremblay. Age 28.

2. What is your residence (Town, County and Province)?

2. Lewiston, Maine.

3. What was the full name, last legal residence (Town and

3. Name. Jean Ovide Tremblay. Residence. Quebec, Co.

Province), and date of death of the deceased?

4. What is the number, date and amount of the policy or policies of life insurance issued by the Ætina Life Insurance Company on the life of the said deceased, under which you claim?

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5. Was the insurance under said policy or policies assigned to you, and do you claim as such assignee?

6. What amount do you claim?

7. What was the nature and amount of the consideration for which the said insurance was assigned to you?

and Prov. of Quebec. Date of death, Jan'y 21, 1901.

4. Number.
149296.
Date.
Aug. 13, 1885.
Amount.
\$2,000.

5. Was assigned to me by J. O. Tremblay & Arthemise D. Tremblay on Jan'y 14, 1901, as copy of assignment attached thereto will show.

6. All, but what is excepted by assignment being between \$500.00 to \$1000.00.

7. Cash and disbursements to be made or already made including funeral expenses.

(NOTE.—A full statement in detail of the amount and character of the indebtedness or other consideration should here be given.)

8. Has said insurance or any part of it ever been transferred or assigned by you? If so, give the names of any and all such assignees.

(Sign-)

8. No.

P. F. TREMBLAY.

STATE OF MAINE,

County of —, ss:

Subscribed before me this thirtieth day of January, 1901, by Patrick F. Tremblay personally known to me, and who made oath that the foregoing statements and answers are true and full.

[SEAL.]

DANA S. WILLIAMS. [SEAL.]

Certified true copy Aug. 13th, 1901.

A. H. VUNT, P. A.

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PL'FF- Ex. K.

H. W. O.

Affidavit of the Party who Claims the Amount Insured.

(Not an Assignee.)

1. What is your full name, residence, and age?

| Name. | Town. | Province. | Age. |
|----------------------------|---------|-----------|------|
| Arthemise Dumais Tremblay. | Quebec. | Quebec. | 65. |

2. What was the full name and last legal residence of the deceased (Town, County and Province)?

| 2. Name. | Jean Ovide Tremblay. | Residence. | Quebec, Co. and Prov. of Quebec. |
|----------|----------------------|------------|----------------------------------|
|----------|----------------------|------------|----------------------------------|

3. When did the said deceased exhibit the first symptoms of the illness which eventually resulted in death?

3. About 6 months ago.

4. What is the number, date and amount of the Policy or Policies of life insurance issued by the Aetna Life Insurance Company on the life of the said deceased, under which you claim.

| 4. | Number. |
|----|----------------|
| | 149296. |
| | Date. |
| | Aug. 13, 1885. |
| | Amount. |
| | \$2,000. |

5. What relation do you bear to the deceased?

5. The true and lawful wife of the deceased.

6. By what authority or title, or in what capacity, do you claim?

6. As the true and lawful wife of the deceased to whom I was married on the 3d day of July, 1863.

(NOTE.—If you claim as a beneficiary, state whether you were the wife, husband, child, parent, or other near relative, as the case may be, of the said deceased, and if you were the wife or husband, state when you were married to the said deceased. If you
155 claim as executor or administrator or guardian, please so state, give the full name of the estate or person for whom you are acting, and their relationship to the said deceased.)

7. Has there been any appropriation, apportionment, assignment, or transfer of said policy or policies, or any declaration or revocation of benefit under the same? If so, state particulars.

7. Said policy was assigned to the Quebec Permanent Building Society on the 22nd day of September, 1885, but said assignment was relinquished by said Society the 26th day of November, 1891. It was assigned also to Jean Baptiste Cloutier, of Quebec, on the 24th day of No-

vember, 1891, and said assignment is still in force. A further assignment was made in favor of P. F. Tremblay, Att'y at Law, of Lewiston, Maine, Jan'y 14, 1901.

ARTHEMISE DUMAIS TREMBLAY.

PROVINCE OF QUEBEC,
County of Quebec, ss:

Subscribed before me this twenty-eighth day of January, 1901, by Arthemise Dumais Tremblay of Quebec, personally known to me, and who made oath that the foregoing statements and answers are true and full.

THOS. M. W. PAMPALON.

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PL'FF EX. L.

H. W. O.

"Voluntary Deposit."

Duplicate for the Depositor.

Judicial Deposit Receipt under Articles 1192, &c.

Revised Statutes P. Q.

No. 413.

\$1,959.49 | 100.

Province of Quebec, District of —.

In the — Court of —.

Case No. —.

— —, Plaintiff.
— —, Defendant.

Received from Ætna Life Insurance Co. the sum of Nineteen hundred and fifty-nine .49 Dollars being deposited by said Co. as Ince. on life of Jean O. Tremblay of Quebec.

UNION BANK,
Per GEO. E. POSTON.

At Quebec this 9th day of April 1901.

PL'FF EX. M.

H. W. O.

To the Honorable the Treasurer of the Province of Quebec, Quebec.

SIR: Take notice that the *Ætna Life Insurance Company of Hartford, Connecticut*, one of the United States of America, a body politic and corporate having its principal office and place of business for the Province of Quebec in the City and District of Montreal, and also having an office in the City of Quebec, hereby deposits with you under the Judicial Deposits Act of Quebec, the sum of nineteen hundred and fifty-nine dollars and forty-nine cents (\$1959.49) currency, being the full amount of insurance money due and payable by it, less a half-yearly premium unpaid, which falls to be deducted, under Policy No. 149,296, issued by it on the life of the late Jean O. Tremblay, in his lifetime formerly of St. Francois Xavier in the said Province, and at the time of his death of the City of Quebec, and which sum is so deposited with you because the same is claimed by conflicting claimants and the said Company does not know to whom to pay the same, to wit, by Jean Baptiste Cloutier, of the City of Quebec, under transfer to him by the said late Jean O. Tremblay of the 24th of November, 1891, notified to the said Company as appears by the claim of the said Cloutier upon the said Company herewith filed marked "A," and is also claimed by Patrick F. Tremblay, of Lewiston, in the State of Maine, one of the said United States, under transfer to him by the said Jean O. Tremblay and Arthemise D. Tremblay (his wife) dated the 14th January 1901, as appears by his claim herewith filed, marked "B," which sum is also deposited with you to the end that the same may be adjudged and paid over to whomsoever is entitled to the same and the said Company be released and discharged from all liability for said insurance money or under said policy, and to the end that said policy with receipts be surrendered and delivered up to said Company as paid and satisfied, together with the exhibits herewith filed, which form part of the proofs and archives of the said Company.

Quebec 9th April 1901.

T. H. CHRISTMAS, *Mgr.*

The undersigned hereby acknowledges receipt from the said *Ætna Life Insurance* of the sum of nineteen hundred and fifty-nine Dollars and forty-nine cents (\$1959.49) deposited with the Treasurer of this Province as stated in the foregoing notice of deposit.

Quebec 9th April 1901.

(Signed)

[SEAL.]

A. H. VUNT,
Provincial Auditor.

158 To the said Jean Baptiste Cloutier, Quebec, Que.; to the said Patrick F. Tremblay, Lewiston, Maine, U. S.; to Messrs. Oakes Pulsifer and Ludden, of Auburn, Me., U. S., aforesaid, Attorneys at Law for the said Patrick F. Tremblay, and to Dame Arthemise D. Tremblay, of Quebec, Widow of the said Late Jean O. Tremblay:

Take notice of the foregoing Deposit made this day by the Ætina Life Insurance Company, and govern yourselves accordingly.

Quebec, 9th April 1901.

[SEAL.]

T. H. CHRISTMAS, *Mgr.*

Approved.

N. W. TRUHOLM.

PL'FF EX. N.

H. W. O.

(*Translation.*)

Superior Court Quebec.

J. B. CLOUTIER, Plaintiff,

vs.

THE HEIRS OF J. O. TREMBLAY, Defendants, & DAME ARTHEMISE DUMAIS et al., "Mise-en-Cause."

To this Honorable Court:

The Plaintiff represents:

(1) From before the 16th of August, 1899, viz., the 22d Sept., 1885, late Jean Ovide Tremblay, then of the Town of Chicoutimi, Surveyor, had borrowed from the "Societe de Construction Permanante de Quebec," and transferred to this latter among other guarantees of the reimbursement of the said loan, jointly with his wife the said Dame Arthemise Dumais, mise-en-cause, the insurance policy No. 149296 issued by the Ætina Insurance Company, to the amount of \$2000, and produced in this case the aforesaid transfer as exhibit A of the Plaintiff.

(2) The 16th of August, 1889, the said Dame Arthemise Dumais, duly empowered by attorneyship from her husband, did by act made and read at Quebec, before Mr. P. E. Duval, notary, borrow from the Plaintiff the sum of \$541, payable by the terms of the said act marked exhibit B of the plaintiff, and did for guarantee of the said loan, assign and transfer to the plaintiff the aforesaid policy, likewise to the said "Societe de Construction Permanante de Quebec."

(3) The said "Societe de Construction Permanante de Quebec" having been paid its loan to the said J. O. Tremblay, the said policy was then remitted to the said plaintiff assignee of same, of which he has since always been in possession of.

(4) The said late J. O. Tremblay and his wife being unable to pay the premiums on the said insurance policy, the plaintiff did, in the interest of the said insured and for his profit and benefit and that of his wife, upon their request and requisition, advance and pay the said premiums at their respective maturities, viz., the 13th Feb'y and the 13th August of each year, since the 13th Feb'y, 1891, to the 13th of August, 1900, inclusively, viz., the sum of \$773.16.

(5) The interests on these aforesaid premiums amount to \$228.49, forming with the aforesaid premiums \$1001.65 as appears by the statement of account piece C of the plaintiff.

(6) The said Jean Ovide Tremblay paid none of the payments stipulated in reimbursement of the aforesaid sum of \$541 loaned to him and the interests matured on the said loan amount to the sum of \$344.60, forming in all \$845.60.

160 (7) The said J. O. Tremblay always acknowledged and promised to pay the aforesaid interests, as much on premiums and on aforesaid loan and again notably in the course of the year 1900.

(8) The 19th of March, 1890, the plaintiff did, in the City of Quebec, loan and advance to the said J. O. Tremblay at his request and for his profit and advantage, \$54.89 to cover deficit on drafts of collection paid to the Provincial government and the 16th of June, same year, \$76 for the same purpose.

(9) The 30th of April, 1890, he equally loaned and advanced at the request of the said J. O. Tremblay, to his son, H. A. Tremblay, at Quebec, the sum of \$100 for the advantage and benefit of the said J. O. Tremblay, and the 27th October, 1891, at Quebec, he equally loaned and advanced to the wife of the said J. O. Tremblay, acting for and in the name of her husband, the sum of \$25.00.

(10) The 4 items aforesaid form the sum of \$255.89, upon which there is due for interest, that of \$165.55, forming \$421.54 which the said J. O. Tremblay often acknowledged to owe and promised to pay to the plaintiff, and notably in the course of the years 1894 and up to the date of his decease.

(11) The said Jean Ovide Tremblay died at Quebec, the 21st January last and his heirs took possession of his goods.

(12) The said defendants owe in all the sum of \$2268.79 to the plaintiff.

161 (13) The mise-en-cause, the Aetna Insurance Company, after the decease of the said Jean Ovide Tremblay, was ready to pay to the plaintiff the amount of the said insurance, less the premium of Feb'y 13, last unpaid and to be deducted therefrom, but that one of the heirs of the said J. O. Tremblay, viz., Patrick F. Tremblay, defendant and mise-en-cause, opposed himself to the said payment, pretending that the said insurance policy had been sold to him.

(14) The plaintiff is regular assignee of the aforesaid policy, assignment transfer been made to him by the said late J. O. Tremblay and his wife, the said mis-en-cause, and furthermore the 26th of Feb'y last, the said mis-en-cause, Dame Arthemise Dumais, made a sworn declaration, declaring that the plaintiff was assignee of the sum of \$1614, arising from this policy.

By arrangement to avoid all costs, the plaintiff would have been and was, then ready to limit his claim on the said policy to the aforesaid sum of \$1614, but the said Patrick F. Tremblay always neglected to make such settlement, and in view of this refusal on the part of the said Patrick F. Tremblay, the said Ætna Insurance Company deposited in the Treasury Department, the aforesaid amount of the said policy.

(15) The actual amount due to the plaintiff for the aforesaid causes is \$2268.79 guaranteed by the aforesaid policy.

For which the plaintiff requests (1) that the defendants be condemned to the payment of the said sum of \$2268.79, with interest to the plaintiff, (2) that it be declared by the Judgment of this Honorable that the plaintiff as assignee insurance policy on the life of the said Jean Ovide Tremblay, No. 149296, issued by the Ætna Insurance Company, mise-en-cause, has right to the amount deposited, which shall be remitted to him upon production of the judgment to be rendered in this case—the whole with costs against the defendants in any case and against the mise-en-cause in case of contest on their part only.

Quebec, April 22, 1901.

(Signed)

ROBITAILLE & ROY,
Att'ys for Plaintiff.

True copy.

ROBITAILLE & ROY,
Att'ys for Plaintiff.

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Summary Proceedure.

PROV. OF QUEBEC,
Dist. of Quebec:

In the Superior Court.

(No. 1070.)

Edward VII, by the Grace of God King of the United Kingdom of Great Britain, Defender of the Faith.

To the heirs of late Jean Ovide Tremblay, during the lifetime of the Town of Chicoutimi, surveyor, the said heirs residing at Lewiston, Maine, U. S. A., Defendants, and The Ætna Life Insurance Company, of the Town of Hartford, Conn., U. S. A., and having its business office in this Province, in the City of Quebec, Dame Arthemise Dumias, widow of the said late Jean Ovide Tremblay, and Patrick F. Tremblay, these latter two of Lewiston, Me., U. S. A., mise-en-cause, the said Patrick F. Tremblay, furthermore one of the defendants aforesaid, mise-en-cause:

We condemn you to appear in our said Court, at the Court House, in the City of Quebec, the 6th day after the signification of this brief, to answer to the demand of Jean Baptiste Cloutier, of the City of

Quebec, Gentlemen, Plaintiff; contained in the declaration herewith annexed.

In default by you to do so, this plaintiff may obtain judgment against you by default, with interest and costs.

In faith of which we have had affixed to the presents the Seal of our said Court, at Quebec, the 22nd day of April, in the year of our Lord, 1901.

(Signed)

EDL. BURROUGHS,

Dep. P. S. C.

This brief is addressed to all and each of the Bailiffs of the Superior Court for the Prov. of Quebec, named for the Dist. of Quebec.

163 True copy.

ROBITAILLE & ROY, *Att'ys.*

This is a translation of the annexed Franch document.

ALPHONSE REED.

PL'FF Ex. O.

H. W. O.

(*Translation.*)

CANADA,

*Province of Quebec,
District of Quebec:*

Superior Court.

(No. 1070.)

JEAN BAPTISTE CLOUTIER, Plaintiff,

vs.

HEIRS OF LATE JEAN OVIDE TREMBLAY, Defendants, and THE ÆTNA
LIFE INS'CE Co. et al., *Misc-en-Cause.*

I, undersigned, Assistant-Prothonotary of the Superior Court for the district of Quebec, certify, that the Defendants and mise-en-cause in this case failed to appear in the delay required by law and that default was registered against them.

Quebec, 3rd June, 1901.

(Signed)

ALPH. BOISSONEAULT,

Dep. P. S. C.

True copy.

ALPH. BOISSONEAULT,

D. P. S. C.

Superior Court, Quebec.

J. B. CLOUTIER

vs.

HEIRS OF THE LATE J. O. TREMBLAY and THE ÆTNA LIFE INS. CO.
et al.

*Motion on the Part of the Plaintiff, in View of the Report of the
Bailiff, Bearer of the Brief in this Case.*

164 That the heirs of the late Jean Ovide Tremblay and Dame
Arthemise Dumais, widow of the said Jean Ovide Tremblay
and Patrick J. Tremblay, of Lewiston, Me., U. S. A. be, by 2 adver-
tisements published in the "Soliel" and the Quebec Daily Mercury,
assigned to appear in this case and that in default by them to do this
in a month, to court from the date of the last advice, the Plaintiff be
permitted to proceed against them as a case by default, with costs.

Quebec, April 25, 1901.

(Signed)

ROBITAILLE & ROY,

Pro. Plaintiff.

Motion granted with expenses.

Quebec, April 25, 1901.

(Signed)

P. MALOUIN, P. S. C.

(Endorsed:) C. S. No. 1070. Cloutier vs. Heirs J. O. Tremblay
and Ins. Co. Motion to summon through the press. Filed Apr. 25,
1901. A. B., D. P. S. C.

True copy.

ALPH. BOISSONEAULT,

Dep'y P. S. C.

The above is a translation of the annexed French document.

A. F. THERRIEN.

PL'FF Ex. P.

H. W. O.

(Translation.)

(Sworn.)

A. B., D. P. S. C.

The 6th day of June, 1901.

Present:

165-169 The Honorable — —.

CANADA,

Province of Quebec,
District of Quebec:

In the Superior —.

(No. 1070.)

J. B. CLOUTIER

vs.

THE TREMBLAY HEIRS and ÆTNA INS. Cop., Mise-en-Cause.

Proof of the Part of the Plaintiff in this Case.

CAMILLE GUAY, agent of the Ætna Ins. Co'y, in the Dist. of Quebec, of Quebec, aged 43 years, being duly sworn on the Holy Evangelists, deposes and says:

I know the parties in this case; I am neither a relative, nor an ally; nor servant; nor domestic of any of them; I am not interested in the result of these proceedings.

You know Mr. Cloutier?

Yes sir.

You remember Jean Ovide Tremblay, deceased at Quebec the 21st of January last?

Yes sir.

Will you refer to exhibit A of the plaintiff at the inquest, and tell us of Jean Ovide Tremblay who is mentioned, is the same person as the defendant in this case?

It is the same person.

This policy was issued by your Company, the Ætna Life Insurance Company, at Quebec?

Yes sir.

Was this policy of insurance transferred in September 1885, to the "Societe de Construction Permanente de Quebec" by the said late Jean Ovide Tremblay and the mise-en-cause, Arthemise D. Tremblay?

Yes, sir, as it appears by the transfer annexed to the said insurance policy.

And, in September 1891, will you state to whom it was transferred.

To Mr. Jean Baptiste Cloutier, the plaintiff in this case, the
170 24th day of November, as it appears by the exhibit K of the
plaintiff at the inquest. Since the decease of Mr. J. O. Trem-
blay, Notary Pampalon produced at the office of the Company which
I represent, the Ætina Insurance Company, a copy of the document,
exhibit D; of the plaintiff at the inquest by which the mise-en-cause,
Arthemise D. Tremblay, declares that the said policy of insurance,
exhibit A, is at present transferred to the plaintiff in this case until
concurrence of the sum of \$16.14. and to Patrick F. Tremblay, the
sum of \$345.49, and authorized the company which I represent to
pay these amounts in consequence.

Why did you not pay in conformity with transferment?

Because we were notified by the said Patrick F. Tremblay not to
pay. We deposited the amount in the hands of the Treasurer of the
Province.

I see that the policy is of \$2000? Please say why you did not
deposit the \$2000?

The policy is of \$2000, the premium on the policy was payable
the 13th of August, the issue of the policy, but to aid the insured
the Company had divided the premium in two semi-annuals, one of
which was payable Aug. 13, and the other Feb'y 13, Mr. Jean Ovide
Tremblay died in January 1901, the Company had right to the pre-
mium due the 13th of Feb'y, 1901, it deducted it from the amount
of the policy \$2000 and we deposited \$1959.49 in conformity with
the law relative to deposits made in the Treasury.

Will you refer to Exhibit C of the plaintiff at the inquest, and tell
us by who the premiums mentioned in the said statement were paid.

To my personal knowledge the plaintiff, Jean Baptiste Cloutier
paid the premiums due on the said insurance policy, from Feb'y
13, 1892 until Aug. 13, 1900, the said dates inclusive. As to the
premiums of Feb'y 13, 1891, and of Aug. 13, 1891, the policy
was then detained by the "Societe de Construction Perma-
171 nente de Quebec." It is possible that the plaintiff may have
paid to the society, and that it was the society itself who paid
us.

I undersigned, stenographer, certify that the foregoing is the exact
translation of my stenographic notes, and have signed.

(Signed)

J. B. MARTEL.

True copy.

N. FORTIER,

Dep. P. S. C.

In the Superior Court, etc., etc., etc.

Proof of the Part of the Plaintiff in this Case.

ALPHONSE COTE, of Quebec, in the District of Quebec, Accountant, aged 50 years, being duly sworn on the Holy Evangelists, deposes and says:

I do not know the parties in this case, etc., etc., etc.

You are the Treasurer of the "Société de Construction Permanentes de Quebec," Mr. Cote?

Yes sir.

Will you take knowledge of exhibit A of the plaintiff at the inquest, and tell us if that policy of insurance had been transferred by late Mr. Jean Ovide Tremblay and Mrs. Arthemise D. Tremblay, for the guarantee of a loan to the "Société de Construction Permanentes de Quebec?"

Yes sir.

You know Mr. Cloutier, the plaintiff in this case?

Yes sir.

Will you take knowledge of the receipt, exhibit L of the plaintiff at the inquest and tell me by whom the sum of \$13.02 was paid, Feb'y 13, 1891 and for what purposes?

I see that it is one of the receipts of the "Société de constructions Permanentes de Quebec" by which it appears that the 13th of Feb'y, 1891, the plaintiff paid, on account of insurance policy of late J. O. Tremblay, \$13.02. This receipt is signed by Mr. Godfroid Goudeau then Secretary of the said "S. de C. P. de Q." and now deceased.

As to the payments of Aug. 13, 1891, I have made no search
172 in my books, but I remember that Mr. Jean Baptiste Cloutier came to the office to pay \$42.02, to pay insurance premiums for J. O. Tremblay.

I, undersigned, stenographer, etc., etc.
(Signed)

(J. B. MARTEL.)

True copy.

N. FORTIER,
Dep. P. S. C.

In the Superior Court, etc., etc.

MR. FRANCOIS LAROCHE, civil employee, of Quebec, in the Dist. of Quebec, aged 50 years, being sworn, etc., etc.

Please take communication of exhibit D, of the Plaintiff at the inquest, appearing to be a copy of a declaration-transfer, of which the original is deposited in the treasure department branch of the auditor of the province, and certified by Mr. A. H. Verret?

I am the attaché of the treasury department "branch of the auditor of the Province, in quality of special officer." I have at present in my possession the papers among which is the original of the exhibit

D, I cannot deposit this original, which should remain in the possession of the department, but I have just established by the collation of the said exhibit D with the original at present in my hands, that it is a copy in conformity. I have in my possession the following receipt of the treasurer.

Voluntary Deposit.

PROVINCE OF QUEBEC, April 9, 1901.

Received from the Ætna Insurance Company the sum of nineteen hundred and fifty dollars, forty-nine cents (\$1959.49), being deposit by the said company, on the life of J. O. Tremblay, of Quebec, under article 1196 R. S. P. Q. Union Bank at Quebec, the 9th of April, 1901.

(Signed)

GEORGE E. POSTON.

I, undersigned, stenographer, etc., etc.

(Signed)

J. B. MARTEL.

173 True copy. One marginal note, good.

N. FORTIER, *Dep. P. S. C.*

In the Superior Court, etc., etc., etc.

J. B. CLOUTIER, Professor in retreat, of Quebec, in the Dist. of Quebec, aged 69 years, being duly sworn on the Holy Evangelists deposes and says:—

I know the parties in this case. The plaintiff in this case.

I am the plaintiff in this case. I loaned to late Jean Ovide Tremblay the sum of \$541 the 16th of August, 1889, as appears by exhibit B of the plaintiff at the inquest, the said late J. O. Tremblay was then the debtor of the "Societe de Constructions Permanentes de Quebec" for a loan made, and had transferred jointly with his wife, the mise-en-cause, Arthemise D. Tremblay, the insurance policy, exhibit A of the plaintiff at the inquest. The act of obligation, exhibit B, was consented to me by the said Dame Arthemise D. Tremblay, as representing her husband, and the insurance policy then detained by the "S. de C. P. de Quebec" was transferred to me by the said exhibit B, in guarantee of the loan which I was then making of the said sum of \$541, and the interests. Subsequently Mrs. Arthemise D. Tremblay as it appears by the letter of the 20th July, 1890, marked exhibit M of the plaintiff at the inquest, asked me for her and her husband to see to the payment of the insurance premiums of the said policy, seeing that it was impossible for them to do so, and I was myself interest-, a assignee of the said policy, I paid at the life of the said late J. O. Tremblay, and the said Arthemise D. Tremblay, the insurance premiums on the dates and for the amounts mentioned in the exhibit C of the plaintiff to the inquest; the 2 first viz., that of Feb'y 13, 1891, for \$13.02, and that of Aug. 13, 1891, for \$42.02; I paid them myself to the "Societe de Construction Per-

manentes de Quebec," who then detained the policy; and the other subsequent premiums up to Aug. 13, 1900, inclusively, I paid -hem

174 myself at the office of the Aetna Life Ins. Co., the mise-en-cause. I paid the amounts mentioned in the said exhibit C, and for premiums of the insurance exhibit A, and I have

never been reimbursed same, nor of the interests on the said premiums advanced by me. It was agreed that the interest should be paid on the said premiums. The said late Jean Ovide Tremblay died at Quebec the 21st January last, owing me as well as the mise-en-cause, Arthemise D. Tremblay, for insurance premiums aforesaid, as well as the interest on same, \$1,001.65, plus the sum of \$541 in capital and \$344.60 in interest, in all \$885.60 due by virtue of the act of obligation exhibit B of the plaintiff to the inquest.

The 19th of March, 1890, I since loaned and advanced to the said late Jean Ovide Tremblay, at his demand, different sums mentioned in the exhibits N and O of the plaintiff at the inquest, leaving due to me \$54.89 on the advances made the 19th March, 1890, and \$76 for advances made the 16th of June, 1890. These advances of the 19th of March 1890 and of the 16th June of the same year, and the loans which I then made, were to cover, at the demand of the said late J. O. Tremblay deficits in his accounts with the Treasury Department.

Thus the receipt of the 16th of June 1890, signed E. E. Tache, ass't commissioner, was to cover an amount which the said J. O. Tremblay was in deficit toward the Government. The 27th of November, 1891, Mrs. Arthemise D. Tremblay, the wife of the same J. O. Tremblay received from me, as it appears by the note, exhibit P of the plaintiff at the inquest, the sum of \$25 mentioned in paragraph 9 of the declaration; the initials A. G. are of Mr. Augustin Gaboury, now deceased. The defendants and the same mise-en-cause owe me for insurance premiums and interest on same, as it appears by the exhibit C of the plaintiff to the inquest, \$1,001.65. By virtue of exhibit B, act of obligation of Aug. 16, 1889, \$541, in capital and \$344.60 of interest—in all \$885.60 furthermore
175 the sum of \$54.89 and that \$76 and of that of \$25 mentioned in paragraph- 8 and 9; in all \$2,018.38 apart from other sums which I did not judge in proper to claim in the present case, because not having any other money to pay me than the insurance policy, it was useless for me to claim all that was due.

After the decease of the said Jean Ovide Tremblay I had occasion to speak to the insurance agent and to notary Pampalon, representing the Aetna Life Insurance Company. It was concerning the settlement of my account as it is alleged, in the action by arrangement, and to avoid costs. I was ready to limit my claim for the sum of \$1,614. Then notary Pampalon had the mise-en-cause sign the declaration and transfer copy of which is produced as exhibit D of the plaintiff at the inquest, but the defendant Patrick F. Tremblay not desiring to agree, the insurance company was obliged to deposit the sum which it had to pay, in the Treasurer's Office in execution of the insurance policy, exhibit A of the plaintiff at the inquest, and I was obliged to take the present action; but before I had Patrick F.

Tremblay written to hoping that he would save me from taking action. Which I was obliged to do because he did not wish the amicable settlement which I had accepted.

I, undersigned, stenographer, etc. etc.

(Signed)

J. B. MARTEL.

A true copy.

(26 words erased, null).

N. FORTIER, *Dep. P. S. C.*

This is a translation of the annexed French document.

ALPHONSE REED.

176

PL'FF EX. Q.

H. W. O.

(*Translation.*)

CANADA,

Province of Quebec, District of Quebec:

In the Superior Court, the 8th Day of June, 1901.

Present: The Hon. Judge L. B. Caron.

No. 1970.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentlemen,
Plaintiff,

vs.

THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During His Life-time of the Town of Chicoutimi, Surveyor, the said Heirs Residing at Lewiston, Me., U. S. A., Defendants; The Ætna Life Insurance Company of Hartford, Conn., U. S. A., and Having Its Business Office in This Province, in the City of Quebec; Dame Arthemise Dumais, Widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, These Latter Two of Lewiston, Me., U. S. A., "Mise-en-cause," the said Patrick F. Tremblay, Furthermore, One of the Defendants Aforesaid, "Mise-en-cause."

The Court having examined the Procedure and the proof on record, and heard the plaintiff by his lawyers, on the merit ex parte, the present case having been inscribed for proof and hearing at the same time.

Maintains the present action consequently adjudges and condemns the defendants to pay to the Plaintiff the sum of \$2,018.39, with interest from the 23d of April last, and the costs. Furthermore declares that the Plaintiff as assignee of the said insurance policy on the life of the said Jean Ovide Tremblay No. 149,296, issued by the Ætna Ins. Co., mise-en-cause, has a right to the amount de-

177 posited in the Treasury Department which shall be handed over to him upon presentation of the present judgment, the whole with costs against the Defendants alone.

True copy.

N. FORTIER, *D. P. S. C.*

This is a translation of the annexed French document.

ALPHONSE REED.

PL'FF EX. R.

PROVINCE OF QUEBEC,

District of Quebec:

In the Superior Court.

No. 1070.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

THE HEIRS OF JEAN OVIDE TREMBLAY, Late of the Town of Chicoutimi, Surveyor, Said Heirs Residing at Lewiston, Maine, United States of America, Defendants, and The Aetna Life Insurance Company of Hartford, Connecticut, United States of America, Having Its Office in This Province, in the City of Quebec; Madame Arthemise Dumais, Widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, These Two Last Being of Lewiston, Maine, United States of America, Made Parties to the Case, Mise-en-cause, the said Patrick F. Tremblay, Furthermore, One of the Aforesaid Defendants, Mise-en-cause.

The said heirs of the *last* Jean Ovide Tremblay and Madame Arthemise Dumais, widow of the said Jean Ovide Tremblay and Patrick F. Tremblay of Lewiston, Maine, U. S. A., hereinbefore named and designated are ordered to appear in one month from the last publication of the present order. (Five words erased.)

ED. L. BURROUGHS,

Dept. P. C. S.

Office of the Prothonotary, Quebec, April 25, 1901.

ROBITAILLE & ROY,

Pro Dem.

178

PL'FF'S EX. S.

Code of Civil Procedure in the Province of Quebec.

SECT. 136. When a defendant who is absent from the Province has no domicile, ordinary residence, or place of business therein; or

When a consort, sued for separation from bed and board, is absent from the Province;

The judge, or prothonotary, upon a return to that effect, may order the defendant to appear within one month from the last publication, in the manner hereinafter prescribed, of the order thus rendered.

A Synopsis of the order, drawn up in accordance with the form contained in Schedule B in the Appendix to this Code, is twice inserted in French and in English, in a newspaper published in each language, respectively, in the district where the court sits. If there is no such newspaper in the district, it is inserted in a similar newspaper in the nearest locality. Such newspapers are mentioned in the order.

SCHEDULE B.

Form for Publication of Summons in Newspaper (Art. 136).

PROVINCE OF QUEBEC,

District of —:

Superior Court.

A. B. of the (Domicile and Occupation), Plaintiff,

vs.

C. D., of the (Residence), Defendant.

The defendant is ordered to appear within one month.

(Date.)

E. F., P. S. C.

179

PL'FF EX. T.

H. W. O.

(Translation.)

CANADA,

Province of Quebec, District of Quebec.

In the Superior Court.

No. 1070.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During his Lifetime of the Town of Chicoutimi, Surveyor, the said Heirs Residing at Lewiston, Maine, U. S. A., Defendants, and The Ætna Life Insurance Company of the City of Hartford, Conn., U. S. A., and Having Its Business Office in This Province, in the City of Quebec; Dame Arthemise Dumais, Widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, These Latter Two of Lewiston, Maine, U. S. A., Appellee, the said Patrick F. Tremblay, Furthermore, One of the Defendants Aforesaid, Appellee.

I, Louis T. Poitras, sworn bailiff of the Superior Court for the Prov. of Quebec, named for the District of Quebec, residing in the

city of Quebec, certify by the present on my oath of office, that the 23rd day of April, 1901, between 4 and 5 o'clock P. M., I personally signified the present summons and demand and declaration thereto annexed, on the *Ætna Life Insurance Company*, of the city of Hartford, Conn., U. S. A., and having its office in this Province at Quebec, at its business office at Quebec, speaking with a reasonable person in charge of the said office the agent at Quebec of the said Appellee therein named, delivering to him then and there a true certified copy of the said brief and declaration thereto annexed; and I noted on the back of such copy the date of the present signification.

180 I certify furthermore, that the 23rd of April inst. 1901, I took the necessary steps to have signified the present brief on the heirs of late Jean Ovide Tremblay, to Dame Arthemise Dumais, widow of Jean Ovide Tremblay, and Patrick F. Tremblay, but that I could not reach them because these latter have no domicile, or residence, or place of business in the Province of Quebec, but both reside in Lewiston, Maine, U. S. A.

I furthermore certify that the distance from the place of the summons to the Court House, is less than one mile, and that the distance from my domicile to the place of the summons is more than one mile.

I further certify that my fees and disbursements amount to the sum of 75 cents, as hereafter detailed.

Quebec, April 23, 1901.

(Signed)

LOUIS T. POITRAS, *B. S. C.*

| | |
|---------------------|-------|
| Signification..... | .50 |
| Transportation..... | .25 |
| | <hr/> |
| | .75 |

True copy.

ALPH. BOISSONNEAULT,
Depp. P. S. C.

The foregoing is translation of the annexed French document.

ALPHONSE REED.

Revised Statutes of the Province of Quebec.

ARTICLE 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer.

ARTICLE 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered and if the money has not been paid into court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant.

It is admitted that the amount due under the policy was paid to J. B. Cloutier by the Treasury Department on June 26th, 1901.

True copies of Exhibits.

Attest:

[SEAL.] I. W. HANSON, *Clerk.*

PLFF. EX. U.

H. W. O.

QUEBEC, 27 *Novbre.*, 1891.

A demande Pay to the Order of La Societe de Construction Permanente.

Vingt-cinq Dollars.

Value received and charge the same to account of A. M. J. B. Cloutier.

(Signs.)

J. O. TREMBLAY,
Par ARTH. D. TREMBLAY.

Quebec.

Endosse: C. S. No. 1070, Cloutier vs. Tremblay, Piece P. du demandeur a l'enquete. Filed Jun. 6 1901. G. P.—D. P. S. C.

Vraie Copie,

ALPH BOISSONNEAULT,

Dep. P. C. S.

Stamp.

PL'FF EX. V.

H. W. O.

(*Translation.*)

CHICOUTIMI, *July* 20, 1890.

J. B. Cloutier, Esq., Quebec.

SIR: I have just received by the mail a notice from the Building Society that it refuses to pay the insurance on the life of my husband; it is really unfortunate to be thus tired by the Society; do they then wish to make us stop, I suppose they would like to place us so that we would be unable to pay so as to seize our property. They do not consider that in making us discontinue paying the life insurances, that they would make us lose all that which we have given, and you who have \$1000 for guarantee if we lost that. I pray you to kindly see to it, you know how it is, they are to pay these insurances with the monies of the month of July and which you the payments that shall be made for the life will be re-mitted to you after the reimbursement of the money which you have already loaned us.

In these times, we need economy in view of our arrears but not to be pushed as does the Building Society. The Building Society has nothing more to do than to take \$15 a month, the rest should be remitted to you and it is for you to make them do the thing for your guarantec and for us. As regards the monies loaned, please be good enough to do that for us. By that you will put us in a position to get a good surveyorship for my husband, which would put us in a position to pay our debts.

As concerns the politics, those who say that my husband was against the candidate of the Government are mistaken that Mr. Cote had been supported by the Government, my husband was a candidate and worked for himself, from the time Mr. Cote made himself known as being the one who had the support of the Prime Minister, then my husband withdrew from the fray and worked for Mr. Cote, for a proof of the thing, as soon as Mr. Cote shall have returned from Quebec, we shall get a certificate from his hand which we shall send you, more than that, it seems to me that Mr. Louis Philippe Pelletier known enough to say that Mr. Tremblay supported the Government's Candidate, it is even Mr. Tremblay who represented Mr. Cote at the Polls and voted for him, if that is not sufficient to have it understood that he supported Cote, I do not know what means we should take to get there.

Henry will go and see Mr. Cote Wednesday and Saturday you will know all about that.

Your very humble servant,

(Signed)

ARTH. D. TREMBLAY.

Endorsed: C. S. 1070, Cloutier vs. Tremblay. Exhibit M of the plaintiff. Filed June 6, 1901. G. P.—D. P. S. C.

True copy.

ALPH. BOISSONNEAULT,
Dep. P. S. C.

This is a translation of the annexed French document.

ALPHONSE REED.

PL'FF Ex. W.

Know All Men By These Presents, That I, Jean B. Cloutier, of Quebec in the Province of Quebec and Dominion of Canada, in consideration of one dollar and other valuable considerations to me paid by the Ætna Life Insurance Company of Hartford, Connecticut, U. S. A., the receipt of which is hereby acknowledged, do hereby sell, transfer, assign and set over into the said Ætna Life Insurance Company:—

1st. All my right, title and interest, both in law and in equity, in and to a certain insurance policy, and the proceeds thereof, No. 149,296, issued by said Ætna Life Insurance Company, on August 13, 1885, on the life of the late Jean O. Tremblay.

2nd. All my right, title and interest, both in law and equity, in and to a certain assignment of said policy made to me by said Jean O. Tremblay, on November 24, 1891.

3d. All my right, title and interest, both in law and in equity, in and to the debt or debts secured or intended to be secured by said assignment up to the amount due on said policy before, at or
184 after the death of said Jean O. Tremblay, viz., \$1959.49, whether said intention was expressed by the terms of said assignment to said Cloutier, or by the language or terms of certain assignments of said policy made by said Jean O. Tremblay and his wife, Arthemise D. Tremblay, to Patrick F. Tremblay, of Lewiston, Maine, U. S. A., under date of January 14, 1901, or by any act or acts, word or words, of said Tremblays, or either or any of them, at, prior or subsequent to the date of said assignment to said Cloutier.

4th. All my right, title and interest, both in law and in equity, in and to any sum or sums hitherto paid by me on account of premiums on said policy.

And I hereby give to said Ætna Life Insurance Company full power to enforce in law or in equity, in any manner it may deem expedient, either in my name or in its own name, but at its own cost, any or all of said rights, against said Patrick F. Tremblay or against any other person or persons.

Witness my hand and seal this eleventh day of July, A. D. 1903.
JEAN B. CLOUTIER. [SEAL.]

Witness:

ELIE ANGERS, N. P.

PL'FF EX. AA.

STATE OF MAINE,

Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE COMPANY

vs.

PATRICK F. TREMBLAY et al.

Deposition of Jean B. Cloutier.

Interrogatories, by R. W. Crockett, Attorney for Plaintiff, and
Answers.

1. What is your name, age, residence and occupation?

A. Jean B. Cloutier, 72 years, late professor at the Laval Normal School of Quebec.

185 2. Did you know Jean Ovide Tremblay, the person mentioned as the insured in policy No. 149296 issued by the Ætna Life Insurance Company, in his lifetime? If so, how long had you known him at the time of his death?

A. I did know Jean Ovide Tremblay the person mentioned as the insured in Policy No. 149,296 issued by the Ætna Life Insurance Company in his lifetime. I had known him 13 years at the time of his death.

3. Did you as assignee of said policy No. 149,296 file with the Ætna Life Insurance Company a proof of death, accompanied by an itemized account of your claim and an affidavit?

A. Yes,

4. If your answer to interrogatory 3 is in the affirmative will you produce and caused to be attached to your deposition a copy of said account?

A. Yes, and said account is attached hereunto.

5. Outside of the computation of interest was said account a correct account of your claim as said assignee and were its various items due you at the death of Jean O. Tremblay?

A. Yes.

6. Why does this account differ from the amount claimed by you in your action begun in the Superior Court of Quebec on the twenty-second day of April A. D. 1901 to recover the amount due you from the proceeds of said policy?

A. Simply because the items mentioned in it amounted to much more than the Judicial Deposit made by the said Etna Life Insurance Company. Being almost sure that the amount of said deposit would be all what I could get from the Jean O. Tremblay's estate, I left some items behind.

7. Do you know Arthemise D. Tremblay, widow of Jean O. Tremblay? If so, how long have you known her?

A. I do know his wife Arthemise D. Tremblay, I got acquainted with her two or three months before I ever knew her husband.
186 8. Explain fully the transaction referred to in Item No. 1 of your account filed with your affidavit as assignee in the proof of death of Jean O. Tremblay, as follows:—1899, March 19, Deficit on bill No. 3 paid by me to the Government: \$54.89."

A. This item is the balance due on three advances made by me on drafts drawn by Jean O. Tremblay on the Commissioner of Crown Lands of this province of Quebec, in payment of commissions to become due to him on future collections of price of sale of Crown Lands or other Crown dues. These drafts being accepted (conditionally) by the Commissioner. I discounted them and paid the proceeds to the Department in discharge (à l'acquit) of Tremblay. The details of this item are as follows:

| | | |
|----------------------------------|----------|----------------|
| 1888, May 28, To loan No. 1..... | \$125.00 | |
| 1888, Sept. 26, " " " 2..... | 125.00 | |
| 1889, Feb. 26, " " " 3..... | 120.00 | |
| | | <hr/> \$370.00 |

Cr.

| | | |
|---|-------|----------------|
| 1888, June 27, By cash or check received from the Dept. of Crown Lands | 15.38 | |
| " Sept. 26, " " " " " | 17.84 | |
| " Dec. 4, " " " " " | 58.93 | |
| 1889, Feb. " " " " " | 91.80 | |
| " July 22, " " " " " | 4.25 | |
| " Sept. 17, " " " " " | 45.07 | |
| 1891, March 19, " " " " " | 97.22 | |
| | | <hr/> \$315.11 |
| Leaving a balance of..... | | <hr/> \$54.89 |

I hereby annex: 1st A French and English document marked No. 1, signed: "J. O. Tremblay, by Arth. D. Tremblay,"
187 and dated May 28, 1888; 2nd. A French and English document marked No. 2, signed: "J. O. Tremblay by Arth D. Tremblay" and dated September 26, 1888; 3d. A French and English document marked No. 3, signed: "J. O. Tremblay by Arth. D. Tremblay" and dated February 26, 1889; 4th. A French and English document marked No. 4, signed: "H. A. Tremblay by Arth. D. Tremblay" and dated May 27, 1890. The latter refers to my answer to question No. 12.

9. What if any connection has this transaction with the transaction of \$54.89 on March, 1890, mentioned in paragraph 8 of the "Bref d'assignation et déclaration" in the suit of J. B. Cloutier vs. the heirs of J. O. Tremblay et als. No. 1070 in the Superior Court for the District of Quebec?

A. The transaction referred to in answer to interrogatory No. 8 is the same as that of \$54.89 mentioned in paragraph 8 of the "Bref d'assignation et Déclaration" in the suit of J. B. Cloutier vs. the Heirs of J. O. Tremblay et als. No. 1070 in the Superior Court for the District of Quebec.

10. Explain fully the transaction referred to in Item No. 2 of said account as follows:—"1889, Loan to J. O. Tremblay on assignment of wages (Notary Duval) \$541.00?"

A. That item of \$541.00 is for the loan referred to in the Contract made the 16th day of August 1889, in presence of Notary P. E. Duvall, of Quebec, which loan the said Jean O. Tremblay was to repay to me in 22 monthly payments of which 21 of \$25.00 and the 22nd and last payment of \$16.00, the first of each month, the first of which was payable in January 1891, but none of them was paid, and hence the reason why I took a "Saisie-Arrêt" in the hands of Coloza, Blair and in September 1891.

11. Explain fully the transaction referred to in Item No. 3 of said account as follows: 1889, August 16th, Fees paid to Notary Duval for deeds and legal notices \$10.00?

188 A. On the 16th day of August 1889, Notary P. E. Duval made a Contract between the late Jean O. Tremblay and me, and his fees for making said contract and forwarding the usual legal notices amounted to \$10.00, which sum was to be paid by the said Jean O. Tremblay, but which I had to pay for him to the said Notary.

12. Explain fully the transaction referred to in Item No. 4 of said account, as follows: "1890, June 16th, Deficit on Bill No. 4, paid by me to the Government, \$76.00?"

A. This sum of \$76.00 is part of \$200.00 which was advanced and paid to the Crown Land Department at the request of H. A. Tremblay, the son of the late Jean O. Tremblay, on commissions to be earned by him for collections on Crown Lands dues; the Draft is dated 27th May, 1890. Out of the \$200.00 advanced I have claimed but \$76.00, for the reason that at the time of his dismissal as Government employee, H. A. Tremblay was only entitled to the latter sum. By claiming this last sum only I have, without in any

way being compelled to do so, reduced my legitimate claim of \$200.00 to \$76.00, which sum, like all the others advanced to the Tremblay, was guaranteed by the assignment of policy No. 149,296, issued by the *Ætna Life Insurance Company*, on the life of Jean O. Tremblay. I hereby annex a copy of the receipt of E. E. Taché, Assistant Commissioner of the Crown Lands Department, which is dated July 16, 1890.

13. Explain fully the transaction referred to in Item No. 5, of said account, as follows: "1890, April 30th, Loan to H. A. Tremblay to pay his dues to the Government, \$100.00?"

A. On that day, 30th April 1890, H. A. Tremblay, who had lately been substituted to his father as Crown Land agent on condition that he would pay all his father's debts, came to me and requested of me \$100.00 to refund to the Government moneys he or his father had collected, and which had been employed for 189 their own private use. That sum, like all the others advanced to the Tremblay family, was guaranteed by the assignment of said policy No. 149,296.

14. Explain fully the transaction referred to in Item No. 6 of said account as follows: "1891, Oct. 27th, Money loaned to Mrs. J. O. Tremblay, \$25.00?"

A. The Item referred to in this interrogatory should say 27th November instead of 27th October. I will answer as though your question had the date of 27th November 1891, instead of 27th October 1891. This sum of \$25.00 was loaned to Mrs. Tremblay as attorney of her husband as per note dated 27th November 1891. She wanted the funds to pay her travelling expenses to Lewiston, where her husband was then residing. I hereby annex a true copy of the aforesaid note.

15. Explain fully the transaction referred to in Item No. 7 of said account, as follows: "1894, January Re Coloza Blair expenses of Court paid to Robitaille and Roy, \$44.00?"

A. At the beginning of September 1891 none of the conditions contained in the contract of August 16, 1889, passed before Notary Duval, had been fulfilled by the said Jean O. Tremblay, when I was informed that he was to be paid of a certain amount of money by Messrs. Coloza and Blair and then, I gave instructions to my attorneys, Messrs. Robitaille and Roy, to issue and file a "Saisie-Arrêt" before Judgment in the hands of the said Coloza and Blair for the Item of \$541.00 of my said account; but unfortunately for me, the said Coloza and Blair appeared and declared that they had no money in hand for the said Jean O. Tremblay. The cost of the proceedings in that matter amounted to \$44.00, which sum I paid to Messrs. Robitaille and Roy in January 1894. The document annexed to this deposition is a true copy of the receipt that Messrs. Robitaille and Roy gave to me when I paid them the \$44.00 in question in January 1894. And, in connection with the aforesaid 190 "Saisie-Arrêt," I hereby annex to my deposition: (1) a certified copy of the Affidavit I made and filed the 14th September, 1891, in the Superior Court of the district of Quebec; (2) a certified copy of the "Transcript" of the said Superior Court.

16. What, if any, conversation or conversations have you ever had with Jean O. Tremblay or his wife Arthemise D. Tremblay, relating to any or all of the above items and in particular relating to their connection with said policy No. 149296?

A. At the time said policy No. 149296 was assigned to me, it was then agreed between me and Mrs. Arthemise D. Tremblay, who was acting as Attorney for her husband, the late Jean O. Tremblay, that the said policy would guarantee all sums of money advanced, or to be advanced by me to herself, or to her husband and son, for, otherwise, I would not have advanced them a single cent.

17. What, if any, payments were made to you during the lifetime of Jean O. Tremblay, on account of any of the items of said account?

A. I received no payment on account of any of the items of my account during the lifetime of said Jean O. Tremblay.

18. Have any of the above transactions, i. e., the transactions relating to any of the items in said account, any connection with any prior transactions between you and the said Jean O. Tremblay and Arthemise D. Tremblay or with either of them? If so, state the facts.

A. No.

19. State, if you know, when the said Jean O. Tremblay severed his connection with the Government as Crown Lands Agent?

A. As far as I can remember it was in the fall of 1889.

20. State, if you know, when his son, H. A. Tremblay, severed his connection with the Government as Crown Lands Agent?

191 A. It was in the summer of 1891.

21. Did you in the lifetime of Jean O. Tremblay acquire title to a house formerly owned by him?

A. Yes.

22. If your answer to the preceding interrogatory is in the affirmative, explain the transaction in full, stating how much, if anything, you made, and how much, if anything, you lost?

A. I bought a house belonging to the said Jean O. Tremblay from the Quebec Building Society for the amount due to said Society by the said Jean O. Tremblay, which was about \$967.00, and paid it spot cash. I sold it 4 or 5 years after for \$1200.00 to a Mr. Baily, and the conditions of the sale were: \$100.00 per annum, with 6% interest. From the time the said house became mine up to the date that I sold it, the said Tremblays continued to occupy it almost all the time without paying me a single cent for the rent, although it was not the conditions. And, moreover, I had to pay a commission of \$72.00 to Reverend Thomas Roberge for the aid he gave me in making the said sale to the said Mr. Baily. I have made no profits at all with the said transaction, having lost the interest of my money for 4 or 5 years, and the said house having not been occupied by others than by the said Tremblays.

23. What, if any, assistance did the Ætna Life Insurance Company give you in your endeavor to enforce your claim under your assignment of the policy on the life of Jean O. Tremblay?

A. I never received any assistance of the Ætna Life Insurance Company nor of its agent, Camille Guay, concerning my claim under

my assignment of the policy on the life of Jean O. Tremblay. I had an Attorney to look after my interests, and he did so without the assistance of any one, except me. I had to pay him \$150.00 for his fees.

192 24. What, if any, understanding was there between you and the insurance company in this matter?

A. None at all, I was rather mad against said Insurance Company.

25. Were J. O. Tremblay and his wife accustomed to borrow money of you? If so, to what extent? Answer fully.

A. Yes, Mrs. Arthemise D. Tremblay used to borrow money from me for her husband, and that, as much as she could do it.

26. Patrick F. Tremblay in his answer says that he has never been able to obtain a full and fair accounting by Mr. Cloutier and that Mr. Cloutier by his suit and by his false and fraudulent pretences therein, deliberately attempted to prevent said Tremblay from obtaining said accounting. What do you say as to the foregoing statement? Explain fully.

A. At the time the said Patrick F. Tremblay came to my house to get a full accounting of his father's business with me, I furnished him with all the informations he asked me and that I could give him. After the Aetna Life Insurance Company had made its Judicial Deposit, of which due notice was given to the said Patrick F. Tremblay as well as to me, he has had plenty time to contest my claim, for, the proceedings in that matter lasted over 30 days, and he was perfectly acquainted with what was taking place.

27. Did you, on the 11th day of July 1903, by an instrument in writing sell, transfer, assign and set over unto the Aetna Life Insurance Company all your right, title and interest in law and in equity, in and to policy No. 149296 and the proceeds thereof, in and to the assignment of said policy made to you on November 24th, 1891, etc., giving to said Company full power to enforce in law or in equity in manner it might deem expedient, either in your name or in its own name, but at its own cost, any and all of said rights against said

Patrick F. Tremblay, or against any other person or persons?

193 A. Yes.

The foregoing deposition having been read over to the witness deponent, he declares that it contains the truth and all the truth and have signed the same.

J. B. CLOUTIER.

Sworn before me in the City of Quebec, District of Quebec, Canada, this 23rd January A. D. 1904.

[SEAL.]

ALEX. GAUVREAU, N. P.

Cross-Interrogatories by Oakes, Pulsifer & Ludden, Attorneys for the Defendants, and Answers.

Cr. Int. 1. Did you keep a book or books of account in which your transactions with Jean O. Tremblay were entered?

A. Yes.

Cr. Int. 2. If your answer to Cross-Interrogatory 1 is yes, when were the several entries in said book made, and by whom?

A. (1) At the dates mentioned in the account attached to my deposition. (2) By myself.

Cr. Int. 3. If your answer to Cross-Interrogatory 1 is yes, will you describe such book or books, identify the same, and forward the same with your deposition to the court in which the present case is pending, for reference at the hearing?

A. In an ordinary cash book of 12½ inches long, 5½ inches wide, and ¾ inch thick. I decline to depart myself with my book.

Cr. Int. 4. Have you had any communication with the plaintiff relative to your suit against the heirs of J. O. Tremblay, or with any person representing the plaintiff, concerning the prosecution of said suit? And if so, with whom and when?

A. No.

Cr. Int. 5. If your answer to the first part of Cross-Interrogatory 4 is in the affirmative, state whether your communication was
194 in writing; and if so, annex to your deposition any letter or letters you may have received from the plaintiff or any person representing the plaintiff, in regard to the subject matter of said suit?

A. See my answer to question No. 4.

Cr. Int. 6. Have you had any correspondence with the plaintiff or any person representing the plaintiff, concerning the pending suit of the Ætna Life Insurance Co. vs. Patrick F. Tremblay et al., with reference to your claim against the estate of Jean O. Tremblay? If so, will you state with whom and when, and annex any letter or letters you may have so received, to this deposition?

A. No.

Cr. Int. 7. What, if any, claim against the estate of Jean O. Tremblay did you have on the eleventh day of July 1903?

A. \$606.36, being the difference between the \$1954.49 and my account of \$2560.85, plus \$150, being the fees I paid to my attorney, Honorable Amédée Robitaille, in my suit vs. Jean O. Tremblay et al., and interest thereon.

Cr. Int. 8. What, if anything, was paid you by the plaintiff at the delivery of your assignment of July 11, 1903?

A. Nothing at all.

Cr. Int. 9. Did you, at the time of the delivery of such assignment, receive any agreement from the plaintiff? If so, will you annex a copy of the same to this deposition?

A. Yes, and I hereby annex a true copy of the said agreement.

Cr. Int. 10. Did you know, at the time you commenced suit against the heirs of J. O. Tremblay, that Mrs. Arthemise D. Tremblay was then residing in Quebec?

A. Yes.

Cr. Int. 11. Have you been informed prior to giving your deposition, of the interrogatories which were to be propounded to you therein?

195 A. Mr. Ralph W. Crockett, the attorney of the Ætna Life Insurance Company, called on me about four months ago, and we have gone over the facts together.

The foregoing cross-interrogatories and deposition having been read over to the witness deponent he declares that it contains the truth and all the truth, and have signed the same.

J. B. CLOUTIER.

Sworn before me in the City of Quebec, District of Quebec, Canada, this 23rd January, 1904 A. D.

[SEAL.]

ALEX. GAUVREAU, N. P.

PLFF. EX. BB.

STATE OF MAINE,
Androscoggin, ss.:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE CO.

vs.

PATRICK F. TREMBLAY et al.

Deposition of Amédee Robitaille.

Interrogatories by Ralph W. Crockett, Att'y for Plff., and Answers.

1. What is your name, age, residence and occupation?

A. Amédee Robitaille, of the city of Quebec, Advocate, King's Counsel and Secretary of the Province of Quebec. Age, 50 years.

2. How long have you been engaged in the practice of law?

A. Since over 26 years.

3. Were you counsel for Jean B. Cloutier, of Quebec, in certain litigation arising out of Policy No. 149296 issued by the Ætna Life Insurance Company on the life of Jean O. Tremblay?

A. Yes.

196 4. State the history of the litigation as far as you were connected with the case?

A. In the month of April 1901, my client, J. B. Cloutier, has instructed me, as one of the legal firm of Robitaille & Roy, to take legal proceedings against the heirs of the late Jean Ovide Tremblay and his widow Dame Arthemise Dumais as defendants and the Ætna Life Insurance Company as mise-en-cause, for an amount of \$2268.79, money loaned to the late Jean Ovide Tremblay and to his wife, including sums paid for their benefit, the insurance policy on the life of the late Jean Ovide Tremblay in the Ætna Life Insurance Company having been transferred by the late J. O. Tremblay and his wife to our client.

This case has gone through as all similar cases and after regular inscription for proof and hearing, judgment has been rendered for our client.

5. State, if you know, whether the Company in making the judicial deposit and in allowing the money due under the policy to be paid over to Mr. Cloutier on the judgment obtained by him acted in good faith?

A. The Ætna Life Insurance Company was made a party to the suit against Tremblay and deposited according to the following article 1198 of the Quebec Revised Statutes, which says: "Whenever any person desires to pay any sum of money which is demanded of him by contending claimants he may deposit the money he so desires to pay, in the office of the Provincial Treasurer. 35 v., c. 5. §10." This deposit, to my knowledge, was made in good faith.

6. Patrick F. Tremblay in his answer says that "said Company cooperated with said Cloutier in assisting him to bring said action to a speedy judgment, and to cause the money due on said policy to be paid to said Cloutier before the determination of the suit by this defendant, Patrick F. Tremblay, against said Company, 197 which was then pending in order to prevent this defendant, Patrick F. Tremblay, from having the case heard on its merits in his suit against said Company, and in order that his proceedings in Quebec might be interposed as a bar to said action of the said defendant, Patrick F. Tremblay." What have you to say as to the foregoing statement? Explain fully.

A. Having taken communication of what Mr. Patrick Tremblay says in his answer to the suit, I affirm most emphatically that neither directly nor indirectly, I had any communication whatever with the Ætna Life Insurance Company for any cooperation as mentioned in the answer of Mr. Patrick Tremblay. Our action has been taken on the instructions of my client and I had no communication whatever with the Ætna Life Insurance Company or any of *his* officers or advisers in order to facilitate our client obtaining judgment and being paid of the judgment rendered in his favor. The case of my client Cloutier against Tremblay went to the Court as ordinary cases. We produce and put in the record evidence legally required to have judgment in favor of our client and nothing at all having the shadow of illegal or irregular means has been done to advance or protect the interests of our client.

7. Patrick F. Tremblay in his answer further says that "said Company collusively or negligently allowed an illegal judgment to be obtained by said Cloutier, and thereafter, notwithstanding that it had full opportunity to withdraw its deposit from the Treasury of the province of Quebec before the same was paid to the said Cloutier, deliberately and willfully allowed the same to be paid on said illegal judgment, notwithstanding that suit had already been commenced and was pending against it in favor of said Patrick F. Tremblay, in which suit notice had been duly served upon said Company, and of which it was fully informed." What have you to say as to the foregoing statement? Explain fully.

A. I deny most emphatically what is stated in the 7th 198 question. There has been no collusion as I have stated in the above answer between my client, myself and the Ætna Life Insurance Company, and I don't see how the deposit being made in the Treasurer's Department, it could be withdrawn by said Company, and as a matter of fact, what has been done as to the deposit in the case of Cloutier against Tremblay, by the Ætna Life Insurance Company is what is done in all the cases, when monies are in dispute, it is to say, deposited in the Treasurer's Department and the

party winning producing the judgment rendered in his favor by the Court into the Treasurer's Department, is paid of the amount deposited. I did not know myself and I had never heard when we were going on with the case of Cloutier against Tremblay, of any lawsuit taken by Patrick F. Tremblay against your Company.

8. Patrick F. Tremblay in his answer further says that "said Company might have fully protected itself against the claims of all parties by filing its bill of interpleader, or by pleading an equitable defence in the suit of said Patrick F. Tremblay, under the provisions of the Revised Statutes of Maine, but it wilfully and collusively neglected and refused to do so, in order that, the illegal proceedings in said Court of Quebec in behalf of the said J. B. Cloutier might be upheld; all of which was contrary to good faith on the part of the said Company." What have you to say as to the foregoing statement as far as it applies to your knowledge of and in connection with the case and as far as the laws of the Province of Quebec apply? Explain fully.

A. The Ætna Life Insurance Company in the case of Cloutier against Tremblay had nothing more to do than make the deposit as it has done. We have in our Code of Procedure nothing of the kind of what you mention as an interpleader. The only plea which might have been filed against the action or claim of Mr. Cloutier would have been a contestation of his claim against the defendant Tremblay, what has not been done by the defendant himself and I don't see how the Ætna Life Insurance Company could contest a claim of our client supported as it has been on promissory notes, transfers, vouchers from defendant, and supporting our client's claim.

The foregoing deposition having been read over by the witness deponent, he declares that it contains the truth and all the truth and have signed the same.

AMED. ROBITAILLE.

Sworn before me in the City of Quebec, District of Quebec, Canada, this 25th day of January A. D. 1904.

[SEAL.]

ALEX. GAUVREAU, N. P.

PLFF. Ex. CC.

STATE OF MAINE,

Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE CO.

vs.

PATRICK F. TREMBLAY et al.

Deposition of Camille Guay.

Interrogatories and Answers.

1. What is your name, age, residence and occupation?

A. Camille Guay, 45 years, Quebec, Province of Quebec, Canada, Insurance Agent.

2. How long have you been agent for the Ætna Life Insurance Company?

A. Twenty-nine years.

3. Do you know Patrick F. Tremblay, of Lewiston, Maine, son of Jean O. Tremblay, the person named as the insured in Policy No. 149,296, issued by the Ætna Life Insurance Company? If so, state how long you have known him?

A. Yes; since January 1901.

4. Do you know Arthemise D. Tremblay, widow of Jean O. Tremblay? If so, how long have you known her?

200 A. Yes; since over twenty years.

5. State the history of the litigation in Quebec over the proceeds of said policy, so far as the litigation came within your personal knowledge?

A. Jean O. Tremblay, the insured under said policy No. 149,296, died on the 21st day of January, 1901; the proofs of his death were filed to the Ætna Life Insurance Company on the 28th day of the same month, and the 90 days allowed to said Company by its policy to pay the amount due under same were to expire soon, when, at that late date, Patrick F. Tremblay, one of those interested in the claim, declined to give his assent to said Company to pay the amount claimed by Mr. J. B. Cloutier, one of the assignees, when he had promised to do so, and when Dame Arthemise D. Tremblay, the original beneficiary of said policy, had given one similar to the one he was declining to sign. Seeing that, and fearing a suit from the part of the said J. B. Cloutier who was becoming very aggressive towards the Company, I suggested them to make a Judicial Deposit of the amount of said policy. On the 9th of April, 1901, I made the said Judicial Deposit for the Company and that very same day I notified all the interested under registered covers, that the said Judicial Deposit had been made. Have had nothing to do in the suit of J. B. Cloutier vs. Tremblay et al., except where I was called as a witness.

6. State whether or not, if you know, the Company in making the Judicial Deposit and allowing money to be paid to Mr. Cloutier, acted in good faith?

A. Yes; the Company, in making said Judicial Deposit, acted in good faith. The only alternative said Company had to protect itself was to make said Deposit.

7. What was your belief as to the Company being protected by making the Judicial Deposit and allowing the money to be paid to

Mr. Cloutier on said judgment? Give reasons.

201 A. Similar deposits had been made by said Company before that one, and in each case its doings and interests were protected by the laws of this country, which permit such deposits to be made when two or more parties do not agree—as was the case between the said Cloutier and Tremblay.

8. What was your belief as to the said judgment being a full and complete bar to all proceedings being instituted against said Company on account of said policy? Give reasons.

A. The Company, in making said deposit, has acted according to the dispositions of our Canadian laws; consequently, it had good rea-

sons to believe that the said judgment was to be a full and complete bar to all proceedings being instituted against it on account of said policy.

9. Did you take part as a witness for Mr. Cloutier in his suit in Quebec? If so, why?

A. Yes, to identify the policy and several other documents and to prove the premiums paid by the said J. B. Cloutier under said policy.

10. Patrick F. Tremblay in his answer says, that "said action was brought by said Cloutier, and said Company cooperated with said Cloutier in assisting him to bring said action to a speedy judgment, and to cause the money due on said policy to be paid to said Cloutier before the determination of the suit by this defendant, Patrick F. Tremblay, against said Company, which was then pending, in order to prevent this defendant, Patrick F. Tremblay from having the case heard on its merits in his suit against said Company, and in order that the proceedings in Quebec might be interposed as a bar to said action of the said defendant, Patrick F. Tremblay." What do you say as to the foregoing statement? Explain fully.

A. The statement of the said Patrick F. Tremblay is untrue, from the beginning to the end. The Company never co-operated, 202 in any way, with the said Cloutier in assisting him to bring said action to a speedy judgment.

11. Patrick F. Tremblay in his answer further says that "said Company collusively or negligently allowed an illegal judgment to be obtained by said Cloutier, and thereafter, notwithstanding it had full opportunity to withdraw its deposit from the Treasury of the Province of Quebec before the same was paid to the said Cloutier, deliberately and wilfully allowed the same to be paid on said illegal judgment, notwithstanding suit had already been commenced and was pending against it in favor of said Patrick F. Tremblay, in which suit notice has been duly served upon said Company, and of which it was fully informed"? What do you say to the foregoing statement? Explain fully.

A. The statement of the said Patrick F. Tremblay is untrue from the beginning to the end. After said deposit was made, said Company had nothing to do with it and could not interfere in the dispute between the said J. B. Cloutier and Tremblay et al. The negligence was rather on the side of the said Tremblay et al. for not having appeared in Court when they were requested to do so, and where they would have had the opportunity to confound the pretensions of the said J. B. Cloutier. Said Company did not even know that the said Tremblay et al. were not contesting the pretensions of the said J. B. Cloutier.

12. What was the attitude of the Company towards Patrick F. Tremblay as far as giving assistance was concerned?

A. The attitude of the Company towards Patrick F. Tremblay was absolutely indifferent, but the mother of the said Patrick F. Tremblay, Mrs. Arthemise D. Tremblay, being a relative to me by my wife, my personal sympathies were for her and her children, and I did my best in their favor in endeavoring to have the said J. B.

Cloutier reduce his claim against them, in fact I succeeded to have it reduced to \$1614.00.

203 13. What was the attitude of the Company towards Mr. Cloutier as far as giving assistance was concerned?

A. The attitude of the Company towards said J. B. Cloutier was absolutely indifferent, but personally, I did my best to have him reduce his claim against the Jean O. Tremblay estate, which he reduced to \$1614.00.

14. Patrick F. Tremblay in his answer further says "that the proof of claim by Arthemise D. Tremblay was filed by her at the instance of the agent of the said Company, and that she did not then and does not at the present time claim any part of the proceeds of said policy." What do you say to the foregoing statement? Explain fully.

A. The statement of Patrick F. Tremblay is partly wrong Arthemise D. Tremblay made her claim under oaths, and she knew what she was doing. She claimed as wife of the insured and original beneficiary of said life insurance policy and she admitted that said life insurance policy had been transferred to the said Jean B. Cloutier and Patrick F. Tremblay, but that the difference between the amount to be paid to Cloutier and the total amount due under said policy would revert to her, and that she had to wait until the claim would have been paid before leaving Quebec City for Lewiston, because she had no funds to satisfy the creditors that she had here, and pay her travelling expenses from Quebec to Lewiston.

15. What, if any, conversation or conversations have you had with Patrick F. Tremblay or Arthemise D. Tremblay relative to the amount due Mr. Cloutier on the policy? Give conversations in detail and dates as near as possible.

A. I have had two or three conversations with said Patrick F. Tremblay at the end of January, 1901, and they took place at my office where the said Patrick F. Tremblay admitted that his father's estate was in debt with said J. B. Cloutier to the extent of some

204 \$1400, but as the pretensions of said J. B. Cloutier were for the whole amount of the policy and more, he said he would assent to the payment of something more and would go as far \$1600.00. He asked me to see Cloutier in order to endeavor to make him reduce his claim, and in case of success, to send him our assenting form No. 7, which he was to sign and return immediately. It is what I did, but he (Patrick F. Tremblay) finally declined to execute said form No. 7 although said Arthemise D. Tremblay and J. B. Cloutier had their own executed. The said Arthemise D. Tremblay called several times at my office and I have had several conversations with her concerning the amount due to the said Cloutier on the said policy. Her visits to my office took place in the months of January, February, March and April, 1901. She was anxious to know what success I had obtained from said J. B. Cloutier re the reduction of his account, and when I informed her that the said Cloutier had consented to reduce his said account to \$1614, she declared herself very satisfied and thanked me for my trouble. She declared also that her son Patrick F. Tremblay would be glad to

learn that good news and would have no more objection to the payment of the amount of said policy as arranged by me. She told me in several occasions that the balance between the amount that would be paid to Cloutier and the amount payable under said policy was to revert to her, and that that money was all that she would have for her old days.

This foregoing deposition having been read over by the witness deponent, he declares that it contains the truth and *and* all the truth, and have signed the same.

CAMILLE GUAY.

Sworn before me in the City of Quebec, District of Quebec, Canada, this 23rd day of January, A. D. 1904.

ALEX. GAUVREAU, N. P. [SEAL.]

205 *Cross-Interrogatories by Oakes, Pulsifer & Ludden, Attorneys for Defendants, and Answers.*

Defendants object to Direct Interrogatory 5, as being indefinite, and giving the defendants no opportunity for specific objection to any statement which deponent may make, and as being such that it is impossible to judge whether the question calls for irrelevant testimony.

For the same reason defendants object to the latter part of interrogatories 7, 8 and 9, and to interrogatories 10, 11 and 14.

Int. 1. If you state that you were agent of the Aetna Life Insurance Company, will you annex to your deposition a copy of your appointment if the same was in writing?

A. Yes, I hereby annex a true copy of my last contract with the Aetna Life Insurance Company.

Int. 2. If you had any special authority or instructions from the Aetna Life Insurance Company, or any letters from the Company or its manager, or any of its officers, with reference to the Policy No. 149,296, issued upon the life of Jean O. Tremblay, will you annex the same as a part of your deposition?

A. Yes, I hereby annex fifteen letters that I have received from T. H. Christmas, Manager of the Aetna Life Insurance Company, of Hartford, Conn., for the Eastern Canada Branch, with reference to the Policy No. 149,296, issued upon the life of Jean O. Tremblay. The letters so annexed are dated as follows: Jan. 23, 24, 26, 28, 29, 29, 30; February 15, 18, 20, 20, 22, 25, 27, and March 1, 1901. I annex also a true copy of my letter of March 29th, 1901, to Mr. T. H. Christmas, with reference to the aforesaid life insurance policy.

The foregoing Cross-Interrogatories and depositions having been read over by the witness deponent, he declares that it contains the truth, and all the truth, and have signed the same.

CAMILLE GUAY.

Sworn before me in the City of Quebec, District of Quebec, Canada, this 23rd day of January, A. D. 1904.

[SEAL.]

ALEX. GAUVREAU.

ÆTNA LIFE INSURANCE COMPANY,
EASTERN CANADA BRANCH OFFICE,
MONTREAL, November 29th, 1901.

Camille Guay, Esq., Quebec, Que.

DEAR SIR: You are hereby authorized to solicit applications for insurance in the Ætina Life Insurance Company, and to receive premiums, upon the terms and under the instructions, conditions and rules hereinafter stated, and in accordance with such rules and instructions as may be adopted by the Company or the undersigned from time to time.

(1) Your field of operations shall be that part of the Province of Quebec east of the Counties of Portneuf, Lotbinière and Beauce, exclusive with headquarters in the City of Quebec.

(2) You are to give your whole time and best energies to the procurement of new business, and to other duties pertaining to the situation, and to keep at least two travellers at work to assist you. Your title shall be that of "Quebec District Agent."

(3) All applications for insurance are to be handed to the undersigned, through whom policies will be issued, if the applications are accepted by the Company. Only the applications so dealt with will

entitle you to the commissions hereinafter stated, and then,
207 only in case policies are issued and the premiums paid thereon in cash, in accordance with the Company's rules and instructions. You are not to present any applicant for examination unless you believe him to be in good insurable health.

(4) You are not authorized to bind the Company, except by delivering the policies issued to you, and collecting premiums thereon, in accordance with the Company's rules and instructions, nor to accept risks of any kind; make, alter or discharge contracts, or waive forfeitures. When policies are so issued upon applications obtained by you, and same are handed to you for collection, you will not deliver them within sixty days from their date unless the parties are in as good health and condition as when they were first examined.

(5) Receipts, to be valid and binding, must issue from the Home Office, be signed by an authorized officer and countersigned by the agent when he receives the premium and delivers it.

(6) You will be remunerated for your services under this agreement by the payment of Commissions on first premiums on acceptable new business secured and paid for in cash by or through you, (single payment premium excepted) as follows:

(a) On participating policies requiring ten annual premiums, Forty per cent. (40%).

(b) On non-participating life policies requiring ten annual premiums, Thirty-five per cent.; (35%).

(c) On participating policies requiring fifteen annual premiums Renewable Term and Elective Endowment plans, Forty-five per cent., (45%).

(d) On non-participating Life policies requiring fifteen annual premiums, (40%).

(e) On participating policies requiring twenty annual premiums, and other participating plans, Fifty per cent., (50%).

208 (f) On non-participating Life policies, whole Life, and 20-Payment plans, Forty-five per cent., (45%).

(g) On non-participating 20 and 25-Years Endowments, Twenty per cent., (20%).

(h) On non-participating 15-Year Endowments, Fifteen per cent., (15%).

(i) On non-participating 10-Year Endowments Ten per cent., (10%).

(j) On single-payment premiums, Three per cent., (3%).

(61-2) for renewals and such extra premiums as may come due after the first insurance year, Two per cent., (2%).

(b) For renewals on business placed on the books through you prior to June, 1896, Three per cent., (3%), instead of Two per cent., as above.

(c) For renewals of business placed on the books through you from June, 1896, to January, 1900, Five per cent., (5%), instead of Two per cent., as above.

(7) If annual premiums are paid in semi-annual installments, the above commission will be paid pro rata of the installments received. No commission is allowed on interest collected or on losses paid. No premiums can be collected and no commissions paid to any one whose agency has been discontinued or terminated in any manner.

(8) All monies received by you under this agreement are a fiduciary trust and are to be used for no purpose whatever, but must be deposited in the Bank of British North America, daily to the order of the undersigned. You will send forward a report of collections every Wednesday and Saturday, returning at the same time all policies for credit, as the Company's practice requires and all renewal receipts held by you past due.

209 (9) You will transact all your business under this agreement with the undersigned, and be governed by his advice and instructions. Necessary stationery and circulars to be used by you in said business will be furnished by the undersigned. Reasonable postage, telegraphing and express charges will also be allowed.

(10) You are not allowed, except by consent of the undersigned, in writing, to solicit applications for insurance in any other Insurance Company, or in any way transact business therefore.

(11) You will furnish a bond of Four Thousand Dollars, with surety, if it should be required, satisfactory to the undersigned.

(12) The right to send travelling agents to your district to transact any business that the interests of the Company may require, is reserved to the undersigned.

The authority hereby given you terminates without notice if you fail to comply with any of the Company's rules or instructions, or any conditions herein stipulated; or, if you fail to furnish during any twelve consecutive months acceptable applications for at least Forty Thousand Dollars new insurance, and to remit the first premiums to be paid thereon in cash.

The right to discontinue any agent or agency at any and at all

times is reserved to the undersigned. If you wish to discontinue business under this agreement you may do so upon giving the undersigned thirty days' previous notice in writing.

Yours truly,

T. H. CHRISTMASS, *Manager*.

QUEBEC, November 30th, 1901.

In consideration of the foregoing, which I have carefully read and agree to, I hereby accept the appointment which constitutes
210 me one of the agents of the Ætina Life Insurance Company, of Hartford, Conn., and I promise faithfully to perform my duties as such agent in conformity with the instructions and conditions and rules of the Company for as long as I hold said appointment. I also acknowledge to have received a copy of the Company's Book of Rules and Instructions, Dated 1899. Also, a Manual, date January, 1901.

CAMILLE GUAY.

True Copy,
C. G.

MONTREAL, Jan'y 22, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 21st inst. is received advising me of the decease of policy holder No. 149,296, J. O. Tremblay, and I enclose herewith blanks for proofs.

So far as our records here indicate, the following is a memorandum of the assignments filed:

- (1) To the Quebec P. and Building Society, September 22, 1885.
- (2) To P. F. Tremblay by the insured and A. D. Tremblay, January 14, 1901.

(3) Said to be assigned to J. B. Cloutier, although no papers have, as yet, so far as we know, been filed.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Jan'y 24, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 23rd inst. received with certain papers under policy No. 149,296, J. O. Tremblay, and the same will be placed on file.

Yours truly,

T. H. CHRISTMAS, *Manager*.

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MONTREAL, Jan'y 26, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Regarding claim made under policy No. 149,296, Joseph O. Tremblay, herewith enclosed find a letter just to hand from P. F. Tremblay, to whom the policy appears to be assigned. I have advised this party that you have the blanks in your hands and that you will communicate with him regarding the proofs. Give this matter please, you close personal attention, and oblige.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Jan'y 28, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 26th inst., received with forms No. 93-A under policies Nos. 182,091 and 182,092, Le Moine, and the same will be referred to the Company. At the same time reference will be made to No. 52,078, same Life, as requested.

Loan papers under policy No. 145,991, Lacasse, also received.

Complying with your request herewith enclosed find an additional form No. 5 to be used in the matter of claim No. 149,296, Tremblay.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Jan'y 29, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Again referring to the matter of insurance under policy No. 149,296, J. O. Tremblay, herewith enclosed find form No. 7-A, which should be executed by the widow Mrs. Arthemise D.

212 Tremblay, consenting to the Company paying the assignees, J. B. Cloutier and P. F. Tremblay, the full amount of the insurance, provided that they come to an understanding. This form should bear a 25-cent revenue stamp, or Canadian postage for the amount should be sent on with which to purchase the same, to affix to the paper.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Jan'y 29, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Regarding the matter of claim No. 149,296, Joseph G. Tremblay, see enclosed copy of letter from Mr. P. F. Tremblay, of Lewiston, Me., regarding the claim of the assignee, and guide yourself accordingly.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Jan'y 30, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 28th inst., received with proofs of claim No. 149,296, J. O. Tremblay, policy and other papers, and the matter will have attention.

Also, loan papers No. 132,157, Geo. N. Trudel.

And, applications of Binet and Duclos. The former, I observe, is said to weigh 182 lbs., and to be only five ft. eight in. in height. Is this correct?

Glad to know that you have some applications under way—to forward at an early date.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, Feb'y 15, 1901.

C. Guay, Esq., Quebec, Que.

213 DEAR SIR: Yours of the 14th inst., received regarding claim No. 149,296, Joseph O. Tremblay, and we shall write the Company to-day for forms No. 7-B, if the same are regarded as the proper papers to have executed, provided the differences

between the interested are adjusted in the manner you indicate as likely.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, *Feb'y* 18, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

As requested, herewith enclosed find form No. 7-B, and if you need another one you can write it out, using the same language.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, *Feb'y* 20, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Regarding claim No. 149,296, Joseph O. Tremblay, since writing you this morning I have heard from the Head Office and it seems that separate forms No. 7-B, enclosed herewith, are required from the respective assignees, J. B. Cloutier and Patrick F. Tremblay. Kindly furnish the same and see that each of them is accompanied with 25 cents Canadian postage stamps with which to buy a revenue stamp to attach.

Yours truly,

T. H. CHRISTMAS, *Manager*.

P. S.—Should not the name of the insured be *Joseph O. Tremblay*? If so, a correction should be made in the forms and properly initialled on the margin.

C.

214

MONTREAL, *Feb'y* 20, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 19th inst. received with form No. 7-B in the matter of claim No. 149,296, Tremblay, and now I anticipate that the proofs will be regarded as complete and satisfactory and I expect that the claim will soon be paid.

I acknowledge also the receipt of an application, but on account of the party having had gravel some two years ago, I am apprehensive that he will be declined.

The name of Mr. J. B. S. Bernier, the agent who wrote the above application, will be placed on our list.

Coupon re policy No. 232,574 is likewise received.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, *Feb'y* 22, 1901.

C. Guay, Esq., Quebec, Que.

DEAR SIR: Yours of the 21st inst., received with form No. 7-B executed by J. B. Cloutier, in the matter of claim No. 149,296, Tremblay, promising to furnish another form of a similar kind signed by P. F. Tremblay, at an early date.

Yours truly,

T. H. CHRISTMAS, *Manager*.

MONTREAL, *Feb'y 25, 1901.*

C. Guay, Esq., Quebec, Que.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

If you will refer to my letter addressed to you under date of the 20th inst., you will observe that form No. 7-B, executed by Arthemise D. Tremblay, is not like the one sent you to be signed, and therefore the paper is returned herewith enclosed.

The enclosed paper does not show that she is the wife of the insured, and her name is spelled differently.

215 The Company ask that the other form be executed properly and that the 25-cent stamp on this form can be attached to the new one.

Give this matter please, your prompt personal attention, and oblige,

Yours truly,

T. H. CHRISTMAS, *Manager.*MONTREAL, *Feb'y 27, 1901.*

C. Guay, Esq., Quebec, Que.

DEAR SIR: Policy No. 222,030, Rochette, with papers for a loan, received.

The matter of the application of Mr. Jean Langlois will again be referred to the Head Office and you will be acquainted with the result at an early date.

Additional form* No. 7-B in the matter of claim No. 149,296, Tremblay, also to hand.

Yours truly,

T. H. CHRISTMAS, *Manager.*

*That additional form No. 7-B was executed by Arthemise D. Tremblay. It was the 3d one executed by her.

MONTREAL, *March 1, 1901.*

C. Guay, Esq., Quebec, Que.

DEAR SIR: Regarding claim No. 149,296, Joseph O. Tremblay, please forward the additional form No. 7-B necessary to complete the papers, signed by Mr. Patrick F. Tremblay, as quickly as possible, and oblige.

Yours truly,

T. H. CHRISTMAS, *Manager.*QUEBEC, *March 29th, 1901.*

T. H. Christmas, Esq., Montreal.

C. G.

DEAR SIR: Re claim No. 149,296, Tremblay. I have made a last and supreme effort to decide Mr. Cloutier to make a new sacrifice to settle this claim amicably, and I dare to require you to ask Mr. P. F. Tremblay what would be his last conditions to settle the matter without going to law.

Yours truly,

CAMILLE GUAY, *Agent.*

A true copy.

PL'FF Ex. DD.

Deposition of Norman W. Trenholme.

Interrogatories.

Replies to Attached Interrogatories.

1. What is your name, age, residence and occupation?

1. Norman William Trenholme, over 60 years of age. I reside at Westmount, Montreal, and am a Judge of the Superior Court of the Province of Quebec.

2. Between what dates were you engaged in the practice of law?

2. From 1865 to 1901; during eight years of which I was Dean of the Faculty of Law of McGill University.

3. Were you counsel for the Ætna Life Insurance Company, of Hartford, Connecticut, in certain litigation arising out of policy No. 149,296 issued on the life of Jean O. Tremblay?

3. I was. For more than twenty years I acted as Counsel for the Company in all its legal business in the Province of Quebec.

4. State the history of the litigation as far as you were connected with the case?

4. Messrs. Cloutier and Tremblay having made conflicting claims for the amount due under a policy issued by The Ætna Life
217 the Company applied to me to have a Judicial Deposit made in the usual course with the Treasurer of the Province. I prepared the papers and notices and the deposit was made by the Company's Agent at Quebec. I had nothing to do with the case after the Judicial Deposit was made, nor had the Company. The proceedings after said Deposit was made took place at the City of Quebec. I have no personal knowledge of them and was not consulted or interviewed in the matter; moreover said proceedings did not concern the Company as it had nothing to do with the matter and stood indifferent and without interest after the deposit was made.

5. Did the insurance company and you as its attorney, in making the judicial deposit of the money due under the policy and in allowing the money to be paid over to J. B. Cloutier on the judgment obtained by him, act in good faith?

5. Most assuredly both the Company and myself acted in perfect good faith in making the Deposit as we had done in many cases previously, and in fact always, for years before, where there were conflicting claimants. We had no interest or concern whatever in the conflicting claimants and it was a matter of perfect indifference to us who received the money as after the deposit and notice to them, the parties were bound to settle the matter between themselves, by litigation or otherwise, and without the intervention of the Company. The Company had nothing to do with "allowing" Cloutier to be paid the money, and had no right to interfere whatever, but he was paid it in consequence of a judgment of the Court in his favor, by the Treasurer of the Province with whom the money was

deposited at Quebec, and who was, by law, bound to obey the Judgment.

6. What was your belief at the time as to the insurance company *begin* protected by this process of Judicial deposit and in allowing the money to be paid over to Cloutier on said judgment?

218 6. My belief at the time was, and is,—and the fact is undoubted—that by our law the Deposit was a perfect protection to the Company. It has always been so held by our Courts. The object of the Company in making the deposit was to avoid litigation. It was anxious to pay, but did not know to whom to pay the amount due. The object and policy of our law are to relieve the debtor from the trouble and expense of litigation by allowing him to make a Judicial deposit, which operates as a payment by and release to him of the debt. We had nothing to do with Cloutier or any other party, and had nothing to do with “allowing” Cloutier or anyone else to receive the money.

7. What was your belief at that time as to said judgment being a full and complete bar to any and all proceedings which might be instituted against the insurance company on account of said policy?

7. This question is answered above. By the laws of this Province the Deposit was a complete bar to any proceedings against the Company, and a complete and perfect discharge. There can be no doubt or question as to this, under our law.

8. Patrick F. Tremblay in his answer says “that said company co-operated with said Cloutier in assisting him to bring said action to a speedy judgment, and to cause the money due on said policy to be paid to said Cloutier before the determination of the suit by this defendant, Patrick F. Tremblay, against said company, which was then pending in order to prevent this defendant, Patrick F. Tremblay, from having the case heard on its merits in his suit against said company, and in order that the proceedings in Quebec might be interposed as a bar to said action of the said defendant, Patrick F. Tremblay.” What do you say as to the foregoing statement? Explain fully.

8. The Company did nothing of the kind. It stood completely aside after making the deposit. Nor did it authorize or suggest anything of the kind. It had no object in doing so. Patrick Tremblay’s whole statement is without a particle of foundation.

9. Patrick F. Tremblay in his answer further says that “said company collusively or negligently allowed an illegal judgment to be obtained by said Cloutier, and thereafter, notwithstanding that it had full opportunity to withdraw its deposit from the Treasury of the Province of Quebec before the same was paid to said Cloutier, deliberately and willfully allowed the same to be paid on said illegal judgment, notwithstanding that suit had already been commenced and was pending against it in favor of said Patrick F. Tremblay, in which suit notice had been duly served upon said company, and of which it was fully informed.” What do you say as to the foregoing statement? Explain fully.

9. The statement of Patrick F. Tremblay is, like the proceeding

one, absolutely unfounded. There was nothing whatever in the conduct of the Company to justify such a statement. The Company had nothing to do with Cloutier obtaining his judgment, nor with the payment of the money to him. After making the deposit, of which due notice was given to Tremblay as well as the other claimant, Cloutier, it was Tremblay's duty to contest Cloutier's action and prevent Cloutier if he could, from getting a judgment for the money, and if there was any neglect it was on the part of Tremblay in not contesting Cloutier's action. Had he come into the case and shown that he had a better title than Cloutier the judgment would have awarded him the money. The Company had nothing to do with allowing any judgment and it could not have interfered. The very object of the Deposit was that the Company might not be involved in any litigation, but stand completely aside and let the

220 contesting claimants fight it out as they saw fit. As to the withdrawing of the money from the Provincial Treasurer, had the Company done so it would have been an act of bad faith and it would have deprived it of the whole benefit of the Deposit. Such an act would never have been thought of after making the deposit. Further, I question if the Treasurer of the Province would have allowed the Company to withdraw the money. It is a thing that the Company has never done, and would not be justified in doing after making a deposit and giving notice to the parties, as in this case. Article 1199 of our Revised Statutes which refers to the withdrawal of a deposit, could not apply to a case of this kind. The deposit receipt spoken of therein is one capable of registration and we have no registration of receipts in this Province unless they relate to real estate, so there could not possibly be any registered deposit receipt in this case. I would confine the provision of Article 1199 to the deposit of sums in payment and discharge of a mortgage or other registered claims against real estate. Article 1200 of the Revised Statutes indicates the cases in which registered Deposit Receipts may exist, and it is only in such cases that a registered Deposit Receipt is possible, and the object of registering the deposit receipt is that it may operate as a cancellation of a mortgage or registered claim against real estate. Article 1199 is as follows:—

“In the case mentioned in the preceding article the Treasurer shall pay over the amount deposited to the claimant who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into Court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant.”

Article 1200 is as follows:

221 “In any case in which a voluntary deposit is made under this section of any amount due in virtue of any registered claim, the depositor shall cause a duplicate of the deposit receipt to be registered and left with the Registrar, and an entry thereof shall be made in the margin of the register opposite the title under which the claim exists, and such registration and entry shall

have the same effect as regards the cancelling of the registration of the claim, as the registration and entry of a discharge from the creditor for a like amount would have had."

These articles were then and now in force. Since this case arose there has been no change in the law applicable to it, and indeed no change for years before.

10. Patrick F. Tremblay in his answer further says that "said company might have fully protected itself against the claim of all parties by filing its bill of interpleader, or by pleading an equitable defense in the suit of said Patrick F. Tremblay, under the provisions of the Revised Statutes of Maine, but that it willfully and collusively neglected and refused to do so, in order that the illegal proceedings in said Court of Quebec in behalf of the said J. B. Cloutier might be upheld; all of which was contrary to good faith on the part of said Company." What do you say as to the foregoing statement as far as it applies to your knowledge of and connection with the case? Explain fully.

10. I cannot speak about proceedings or interpleader under the laws of Maine. I know that the Company here, and I as its Counsel for the Province, were never actuated in any way with a view to assist Cloutier, but believed, as is the case, that as the policy was issued at Quebec that was the proper place, under our law, to make the deposit and for the parties to litigate in respect to their conflicting claims to the money, and we were undoubtedly of opinion that the deposit there operated as a good payment of the money; not only in this Province, but everywhere.

222 11. What is the law and practice of the Province of Quebec in regard to the appointment of administrators of intestate estates?

11. Under the law of this Province we have not the system and practice of appointment of administrators to intestate estates. The estate is administered usually by executors, where there is a will, but in the case of an intestate estate, the heirs are vested with the entire estate upon the death of the intestate, and are by law seized with its administration. It is very usual, however, for a number of heirs to authorize, under Power of Attorney, some one of themselves, or a third party, to do the practical work of administration. If the estate is vacant, that is, if there are no heirs, or the heirs all renounce, then, on the application of creditors or interested parties, the Court will appoint an administrator, under the name of "Curator" to the estate.

12. When a suit is brought against an intestate estate in the Province of Quebec how are the defendants named?

12. If the suit is brought within six months of the death of the intestate the defendants may be named and designated in the writ generally as the heirs of so and so, without more particularly describing them, and suit against the heirs of J. O. Tremblay in which the defendants were described simply as heirs of J. O. Tremblay would be perfectly legal when instituted within six months after his death. The object of this law is that persons having claims against the deceased may not be exposed to lose their rights against a large

number of possible absent heirs whose existence or whereabouts may be unknown, and whom it is impossible to individually describe. After the six months, in suits against heirs the defendants must be individually described in the writ, with their residence.

13. What is the meaning and application of the term "Mise-en-cause" under the laws of the Province of Quebec?

223 13. Under our law and practice the usual parties to a suit are, of course, the Plaintiff and defendant. The "Mis-en-cause" is a party named in a writ and notified of the suit simply for the purpose of giving him notice of the litigation that is going on between the Plaintiff and the defendant so that if he has any rights in connection with the matter that may be prejudiced by the litigation he may take Proceedings to uphold such rights, but if he elects to take part in the proceedings he cannot invoke the rights of either Plaintiff or defendant, but only his own. It is an exceptional thing to have a "Mise-en-cause" in a suit. The Mise-en-cause, even though served with a writ, is not called upon to take any part in a suit unless he sees fit. In this case the Company did nothing, and was not called upon to do anything, but simply relied, as it had a right to do, upon its deposit, and notices to the parties and receipt from the Provincial Treasurer.

The deposit made by the Company is usually spoken of as a "Judicial Deposit," although not made in Court. It is so called because made under what is briefly styled our "Judicial Deposits Acts," and such deposits as that in question may be made either with the Prothonotary of the Court or the Provincial Treasurer. If made with the Prothonotary, he is obliged to transmit the monies to the Provincial Treasurer, so that the more direct way of making such deposits is to make them at once with the Treasurer.

And further this Deponent saith not ann hath signed.

N. W. TRENHOLME.

Sworn before me at the Town of Westmount this Eleventh day of January, one thousand nine hundred and four.

RONZO H. CLERK,

Notary Public.

224 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE COMPANY

v.

PATRICK F. TREMBLAY et al.

Deposition of Norman W. Trenholme.

Cross-interrogatories by Oakes, Pulsifer, and Ludden, Attorneys for Defendants.

Defendants object to Direct Interrogatories 4, 8, 9 and 10 as being indefinite, and giving the defendants no opportunity for specific

objection to any statements which deponent may make, and as being such that it is impossible to judge whether the questions call for irrelevant testimony.

PL'FF Ex. EE.

Deposition of Frank W. Bidwell,

of Hartford, County of Hartford, and State of Connecticut, a witness of lawful age, produced, sworn, and examined under oath, on the 24th day of December, in the year of our Lord, one thousand, nine hundred and three, at the office of Albert C. Bill, the subscriber hereto, at No. 50 State Street, in the city of Hartford, county of Hartford, and state of Connecticut aforesaid, by me, a commissioner duly appointed by commission issued out of the clerk's office of the Supreme Judicial Court at Auburn within and for the county of Androscoggin, State of Maine, bearing teste in the name of John L. Reade, clerk of the said Supreme Judicial Court with the seal of said court affixed thereto, and to me directed authorizing and empowering me to take the answers to the interrogatories thereunto annexed

225 of said Frank W. Bidwell, to be used in a certain cause now pending in said Court wherein the Ætna Life Insurance Company in equity is plaintiff and Patrick F. Tremblay and Arthemise D. Tremblay are defendants, in behalf of the said Ætna Life Insurance Company as well upon the cross-interrogatories of the said defendants as on the interrogatories of the said plaintiff which were attached to the said commission, and the said Frank W. Bidwell, being first duly sworn by me as a witness to the said cause previous to the commencement of his examination to testify to the truth, the whole truth and nothing but the truth as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated testified and deposed as follows:

Interrogatories by RALPH W. CROCKETT, attorney for Plaintiff:

Int. 1. What is your name, age, residence and occupation?

Answer to first Int. Frank W. Bidwell; age 38; residence, No. 175 Beacon Street, Hartford, Conn.; occupation, Head of the Death Claims Department of the Ætna Life Insurance Company.

Int. 2. Did you at the home office of the Ætna Life Insurance Company have charge of certain litigation arising out of policy No. 149,296 issued on the life of Jean O. Tremblay?

Answer to 2d Int. Yes.

Int. 3. State the history of the litigation as far as you were connected with the case.

Answer to 3rd Int. Said policy was issued August 13th, 1885, and was written payable to the insured's wife, Arthemise D. Tremblay, or in event of her death before his to his executors, administrators or

226 assigns within ninety days after satisfactory proof of the death of the said Jean O. Tremblay. Said policy also provided, by Section 4, that "any claim against this Company arising under this policy made by any assignee shall be subject to proof of interest; but in no case does the Company guarantee the validity of an assignment."

Said Company received proofs of death at its Home Office January 31, 1901. Claim was made under said policy by J. B. Cloutier, for the whole amount of said policy by reason of its having been assigned to him. Claim was made by Patrick F. Tremblay, as assignee, for "all but what is excepted by assignment, being between \$500 and \$1000," and the assignment to him was dated January 14th, 1901, and made subject to J. B. Cloutier's claim. On receiving this assignment said Company acknowledged receipt of same as follows:

JAN. 19, 1901.

"P. F. Tremblay Esq., 256 Lisbon St., Lewiston, Maine (thro' T. H. Christmas).

DEAR SIR: We have your favor of the 16th inst. enclosing an assignment of policy No. 149,296 on the life of Jean O. Tremblay, executed by said insured and Arth. D. Tremblay in favor of yourself under date of Jan. 14th, 1901, subject to the claim of J. B. Cloutier, which we place on file for such attention as it may deserve when the policy becomes a claim. We have on file no assignment to J. B. Cloutier, and we wish you would send us a duplicate of that transfer. We have, however, on file a collateral assignment in favor of the Quebec Permanent Building Society, and if the consideration for which this transfer was made has been satisfied we will, on advice to that effect, send papers for a proper release of said transfer.

Yours truly,

J. L. ENGLISH, *Sec. B.*"

227 This letter distinctly stated that the Company would place said assignment "on file for such attention as it may deserve when the policy becomes a claim." This acknowledgment of the receipt of the assignment was in accordance with the rules and practice of the Company. The Company imposes no conditions whatever in regard to making an assignment valid, but of course cannot refuse to place on file any assignment, transfer or other paper relating to the title. Said Company did not assent to the assignment to said Patrick F. Tremblay in any way, for, as provided in the policy contract, said Company does not "guarantee the validity of an assignment." In fact, all the Company had to do was to place the assignment or transfer on file so that it could give it such attention as it might deserve when the policy became a claim. Said Patrick F. Tremblay had knowledge of the previous assignment under this policy, and said letter to him acknowledging receipt of the assignment expressly mentioned another assignment which had not been released to the knowledge of the *the* Company, so that he had no right to believe said Company assented to same. Claim was made by Arthemise Dumais Tremblay "as the true and lawful wife of the deceased." On account of these rival claims the said Company en-

deavored to get the claimants to reconcile their differences so that the amount due under said policy, viz., \$1959.49, could be paid without any unnecessary trouble or expense. The efforts of the Company were so far successful that said J. B. Cloutier was willing to reduce his claim to \$1614 and said Arthemise D. Tremblay was willing that said Company pay him this amount and the balance, viz., \$345.49 to said Patrick F. Tremblay, but the latter refused to assent to this arrangement, and as the ninety days above mentioned had nearly expired, and as said Company feared said Cloutier would bring suit, the said Company under the advice of its Canadian

228 Counsel, Hon. N. W. Trenholme of Montreal, made a Judicial Deposit of the amount due under said policy, forwarding to said Trenholme a check for such purpose. Said Judicial Deposit was made in accordance with the laws of Quebec, said Patrick F. Tremblay was properly notified that the Judicial Deposit was made at Quebec, as were the said Mrs. Arthemise D. Tremblay and others.

Int. 4. State whether or not the Insurance Company and you as its representative in making the judicial deposit of the money due under the policy and in allowing the money to be paid over to J. B. Cloutier on the judgment obtained by him, acted in good faith?

Answer to Int. 4. The said Company, and I as its representative, most certainly acted in good faith in making such Judicial Deposit. This has been the practice of the Company for many years where there were rival claimants, and they were unable to harmonize their interests. The Company invariably endeavors to have the rival claimants make an amicable arrangement between themselves, but if they — unable to do so, then, if in Quebec, a Judicial Deposit *in* made. The Company had nothing whatever to do in allowing the money to be paid over to J. B. Cloutier on said judgment.

Int. 5. What was your belief at the time as to the Insurance Company *begin* protected by this process of Judicial Deposit and in allowing the money to be paid over to Cloutier on said judgment?

Answer to 5th Int. My belief at the time such Judicial Deposit was made, was that the Company was perfectly protected in making the Deposit. It had always been so held by the Quebec Courts. Said Company had nothing to do in allowing the money to be paid over to said Cloutier.

Int. 6. What was your belief at that time as to said judgment being a full and complete bar to any and all proceedings which might be instituted against the Insurance Company on account of said policy?

229 Answer to 6th Int. My belief at the time said Judicial Deposit was made was that said Deposit was a full and complete protection to said Company against any proceedings which might be brought on account of said policy. Said Company had repeatedly made such Deposits in other cases where there had been rival claimants and in every case had been fully protected.

Int. 7. Patrick F. Tremblay, in his answer, says that "said Company co-operated with said Cloutier in assisting him to bring said action to a speedy judgment, and to cause the money due on said policy to be paid to said Cloutier before the determination of the suit

by this defendant, Patrick F. Tremblay, against said Company, which was then pending in order to prevent this defendant, Patrick F. Tremblay, from having the case heard on its merits in his suit against said Company, and in order that the proceedings in Quebec might be interposed as a bar to said action of the said defendant, Patrick F. Tremblay." What do you say as to the foregoing statement? Explain fully.

Answer to 7th Int. Such statement by Patrick F. Tremblay is absolutely untrue. Said Company did not co-operate with said Cloutier in any manner whatever in assisting him to bring his action to a speedy judgment, nor did said Company in any way cause, or try to cause, the money due on said policy to be paid to said Cloutier before the determination of the suit of said Tremblay against said Company. In fact, said Company had nothing to do with the case after the Judicial Deposit was made.

Int. 8. Patrick F. Tremblay, in his answer, further says that "said Company collusively or negligently allowed an illegal judgment to be obtained by said Cloutier, and thereafter, notwithstanding that it had full opportunity to withdraw its deposit from the Treasury of the

Province of Quebec before the same was paid to said Cloutier, 230 deliberately and willfully allowed the same to be paid on said illegal judgment, notwithstanding that suit had already been commenced and was pending against it in favor of the said Patrick F. Tremblay, in which suit notice had been duly served upon said Company, and of which it was fully informed." What do you say as to the foregoing statement? Explain fully.

Answer to 8th Int. Said statement by Patrick F. Tremblay is absolutely untrue. Said Company did not collusively or negligently allow any illegal judgment to be obtained by said Cloutier, and had nothing whatever to do with the judgment. After making the judicial Deposit said Company had nothing further to do with the case. The very object of said Deposit was to release the said Company from further liability and allow the rival claimants to settle the matter between themselves. Said Tremblay could have contested said Cloutier's claim if he had so desired. He had proper notice, and the papers, including the policy itself, were in Quebec, and even the assignment to said Tremblay was made there. The suit by Patrick F. Tremblay was not brought until long after said Company had made said Judicial Deposit.

Int. 9. Patrick F. Tremblay, in his answer, further says that "said Company might fully have protected itself against the claims of all parties by filing a bill of interpleader or by pleading an equitable defense in the suit of said Patrick F. Tremblay under the provisions of the Revised Statutes of Maine, but that it collusively and willfully neglected and refused to do so, in order that the illegal proceedings in said Court of Quebec in behalf of the said J. B. Cloutier might be upheld; all of which was contrary to good faith on the part of said Company." What do you say as to the foregoing statement as far as it applies to your knowledge of and connection with the case? Explain fully.

Answer to 9th Int. I do not see how said Company might have

231 fully protected itself against the claims of all parties by filing its bill of interpleader or by pleading equitable defense in the suit of Patrick F. Tremblay against said Company, under the provisions of the Revised Statutes of Maine, as said Company had already deposited the money due under said policy in the Quebec Court, and in accordance with the laws of such Province where the policy was issued and held, and where the insured died. It was considered that the proper Court to determine the questions at issue was the Quebec Court, and that the proceedings there by said Company were perfectly proper and legal. I had full charge of this case from the time the proofs of deaths were first received, and know that everything in connection with the said Judicial Deposit was done in good faith. It was immaterial to the Company which party received the amount due under said policy, though it did all it could to have the rival claimants harmonize their interests before making Judicial Deposit in order to save expense and trouble for all parties concerned.

FRANK W. BIDWELL.

Cross-Interrogatories, by Oakes, Pulsifer & Ludden, Attorneys for Defendants, and Answers Thereto by the Witness, Frank W. Bidwell.

Cross-Int. 1. Did you act in connection with the claim upon the Jean O. Tremblay policy No. 149,296 upon your own discretion or by direction from some other person?

Ans. to Cross-Int. 1. I acted upon my own discretion with the general knowledge and approval of the Secretary of the Company.

Cross-Int. 2. Were the contents of the letters purporting to be written by J. L. English, Secretary, known to him when the same were written, and were they written by his direction?

232 Answer to Cross-Int. 2. The Secretary, Mr. English, knew the general tenor of these letters, but they were not specifically dictated by him.

Cross-Int. 3. Will you annex to your deposition, as a part of the same, all letters received by the plaintiff, or at the office of the plaintiff with reference to policy No. 149,296, on the life of Jean O. Tremblay, from J. B. Cloutier, P. F. Tremblay, Oakes, Pulsifer & Ludden, and T. H. Christmas, and copies of all letters sent by the plaintiff, or by any person for the plaintiff, from its office, with reference to said policy, to the same persons?

Ans. to Cross-Int. 3. I annex hereto all such letters which are at the office of the plaintiff, with copies of the replies made to the same by, or on behalf of, said plaintiff. The rest of the correspondence has been sent from time to time to the plaintiff's attorney, Mr. Ralph W. Crockett, and is now in his possession. Such letters and copies of replies are as follows:

Letter of T. H. Christmas to J. L. English, dated Jan. 22, 1901, marked Exhibit "1" which I now hand to the commissioner.

(The witness here produces the letter which is marked Exhibit "1" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of the letter written by J. L. English, Secretary, Bidwell, to T. H. Christmas, dated Jan. 23d, 1901, marked Exhibit "2" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "2" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

233 Letter of T. H. Christmas to J. L. English, dated Jan. 24, 1901, marked Exhibit "3" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "3" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Jan. 25, 1901, marked Exhibit "4" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "4" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Jan. 26th, 1901, marked Exhibit "5" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "5" and is attached to and made a part of this deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of the letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, January 28, 1901, marked Exhibit "6" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "6" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Jan. 29, 1901, marked Exhibit "7" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "7" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

234 Letter of T. H. Christmas to J. L. English, dated Jan. 30, 1901, marked Exhibit "8" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "8" and is attached to and made a part of this deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of the letter written by J. L. English, Sec'y, Bidwell, to T. H. Christmas, dated Feb. 4, 1901, marked Exhibit "9" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "9" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 8, 1901, marked Exhibit "10" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "10" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 11, 1901, marked Exhibit "11" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "11" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 16, 1901, marked Exhibit "12" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "12" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 16, 1901, marked Exhibit "13" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "13" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, dated Feb. 19, 1901, marked Exhibit "14" which I now hand to the Commissioner.

(The witness here produces copy of the letter which is marked Exhibit "14" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 18, 1901, marked Exhibit "15" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "15" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 20, 1901, marked Exhibit "16" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "16" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, dated Feb. 23, 1901, marked Exhibit "17" which I now hand to the Commissioner.

(The witness here produces copy of the letter which is marked Exhibit "17" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 22, 1901, marked Exhibit "18" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "18" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Feb. 27, 1901, marked Exhibit "19" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "19" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, dated Feb. 28, 1901, marked Exhibit "20" which I now hand to the Commissioner.

(The witness here produces copy of the letter which is marked Exhibit "20" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Apr. 10, 1901, marked Exhibit "21" which I now hand to the Commissioner.

237 (The witness here produces the letter which is marked Exhibit "21" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated Apr. 12, 1901, marked Exhibit "22" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "22" and is attached and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated June 14, 1901, marked Exhibit "23" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "23" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, dated June 15th, 1901, marked Exhibit "24" which I now hand to the Commissioner.

(The witness here produces copy of the letter which is marked Exhibit "24" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated June 19, 1901, marked Exhibit "25" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "25" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

238 Letter of Mr. T. H. Christmas to J. L. English, dated June 28, 1901, marked Exhibit "26" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "26" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to T. H. Christmas, dated Aug. 6th, 1901, marked Exhibit "27" which I now hand to the Commissioner.

(The witness here produces copy of the letter which is marked Exhibit "27" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated June 25, 1902, marked Exhibit "28" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "28" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Letter of T. H. Christmas to J. L. English, dated July 7, 1903, marked Exhibit "29" which I now hand to the Commissioner.

(The witness here produces the letter which is marked Exhibit "29" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated Feb. 7, 1901, marked Exhibit "30" which I now hand to the Commissioner.

239 (The witness here produces the copy of the letter which is marked Exhibit "30" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated Mar. 1st, 1901, marked Exhibit "31" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit 31" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated March 9th, 1901, marked Exhibit "32" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "32" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner.*)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated March 18th, 1901, marked Exhibit "33" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "33" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated March 26th, 1901, marked Exhibit "34" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "34" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell
240 to Jean Biptiste Cloutier, dated Feb. 16, 1901, marked Exhibit "35" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "35" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell to Jean Baptiste Cloutier, dated March 1st, 1901, marked Exhibit "36" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "36" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell, to Jean Baptiste Cloutier, dated March 9th, 1901, marked Exhibit "37" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "37" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell to Jean Baptiste Cloutier, dated March 18th, 1901, marked Exhibit "38" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "38" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

Copy of letter written by J. L. English, Sec'y, Bidwell to P. F. Tremblay, dated Feb. 23, 1901, marked Exhibit "39" which I now hand to the Commissioner.

(The witness here produces the copy of the letter which is marked Exhibit "39" and is attached to and made a part of his deposition.

ALBERT C. BILL, *Commissioner*.)

FRANK W. BIDWELL.

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(EXHIBIT 1.)

MONTREAL, Jan. 22, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: We have received intimation of the decease of policyholder No. 149,296, J. O. Tremblay, and should be glad if you will kindly forward a memorandum of the assignments on file under same.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 2.)

JAN. 23, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: We are in receipt of your letter of the 22nd notifying us of the death of Jean O. Tremblay. The policy, by our records, is written for the benefit of his wife Arthemise D. Tremblay, or in event of her death before his to his executors. We have on file what purports to be an assignment signed, "J. O. Tremblay par A. D. Tremblay procureur Arthemise D. Tremblay." This was only acknowledged 25. by Arthemise Dumas, wife of Jean Ovide Tremblay Sept. 1885 to the Quebec Permanent Building Society as collateral. Then we have an assignment under date of Jan. 14, 1901 in favor of Patrick F. Tremblay, attorney-at-law of Lewiston, Me., as collateral, signed by J. O. Tremblay and Arthemise D. Tremblay, though it was only acknowledged by Jean Ovide Tremblay. If any of these assignees claim no interest they should execute form No. 58.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

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(EXHIBIT 3.)

MONTREAL, Jan'y 24, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Herewith enclosed please find assignment of policy No. 149,296, J. O. Tremblay, in favor of J. B. Cloutier, of Quebec, and form No. 58 executed by the Secretary of the Permanent Building Society, to place on file.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 4.)

MONTREAL, Jan'y 25, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Joseph O. Tremblay.

Referring to your favor of the 23rd inst., would say that yesterday I sent you some other papers which perhaps will straighten out the title. If you need anything further to complete the proofs, please say.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 5.)

MONTREAL, Jan'y 26, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Yesterday when writing you regarding No. 149,296, Joseph O. Tremblay, my letter should have read "do you need anything further to invest the title in Messrs. J. B. Cloutier and P. F. Tremblay, who purpose making claim?"

Yours truly,

T. H. CHRISTMAS, *Manager.*

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(EXHIBIT 6.)

JAN. 28, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: We have yours of the 25th and 26th inst. concerning policy No. 149,296, J. O. Tremblay. You state that claim will be made by J. B. Cloutier and P. F. Tremblay. If they are to claim the full amount of this policy, we should have the consent of the widow, Mrs. Arthemise D. Tremblay, in written form, duly acknowledged, and bearing a 25 ct. revenue stamp (U. S.) to our paying them the full amount. We presume that proofs of death will be furnished soon.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

(EXHIBIT 7.)

MONTREAL, Jan'y 29, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Please see enclosed letter from P. F. Tremblay, regarding assignments recently filed in the matter of policy No. 149,296, Joseph O. Tremblay. A copy of this letter has been furnished our agent who has the matter of securing the proofs in hand. I have thought it well to file the enclosed with you, however.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 8.)

MONTREAL, Jan'y 30, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Herewith enclosed please find proofs of claim
244 No. 149,296, Joseph O. Tremblay, with policy, certain assignments, including form No. 58, executed by the Quebec Permanent Building Society, and several renewal receipts.

Our Quebec agent, Mr. Guay, states that it is not possible for an amicable agreement to be arrived at between the widow and assignee, and he advises a Judicial Deposit.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 9.)

FEB. 4, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: We have received proofs of death under policy No. 149,296, Jean O. Tremblay. This policy, by our records, is written for the benefit of his wife, Arthemise D. Tremblay, etc. The policy was assigned to the Quebec Permanent Building Society, and released by them. Then it was assigned by the insured under date of Nov. 24, 1891 to J. B. Cloutier of Quebec as collateral. Then under date of Jan. 14, 1901 the insured assigned it to Patrick F. Tremblay, Attorney-at-Law, of Lewiston, Me., as collateral. This assignment was signed by the insured and was also signed by "Arth. D. Tremblay," but was not acknowledged by the latter. Claim is made for the full amount of this policy by Jean Baptist Cloutier of Quebec. Form No. 4 is executed by Arthemise Dumais Tremblay, who states that the policy was assigned as above stated. We have received a letter written by Patrick F. Tremblay under date of Jan. 28, 1901, to you, in which he states that he offered to adjust the matter as to their different rights with Mr. Cloutier, but that he refused; that Mr. Cloutier then went to Mrs. Tremblay and tried to have her accept or recognize his account as being correct, while he, Mr. Tremblay, proved that they were wrong; and for that reason Mr. Tremblay desires that all documents be sent to him by Mr. Guay, and that his mother should do nothing without his consent. You should instruct Mr. Guay not to forward any papers to Mr. Tremblay, or anyone else, except to yourself. The interests of the assignees should be adjusted and when this is done we should have the consent in written form, duly acknowledged and bearing a 25 ct. revenue stamp (U. S.) of Mrs. Arthemise D. Tremblay and both assignees to our paying the proper amounts.

Yours truly,

J. L. ENGLISH, Sec.
BIDWELL.

(EXHIBIT 10.)

MONTREAL, Feb'y 8, 1901.

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

Herewith enclosed please find a letter from our Quebec Agent, Mr. Camile Guay, together with correspondence therein referred to. You will observe that he suggests a prompt Judicial Deposit as soon as it can properly be made.

Yours truly,

T. H. CHRISTMAS, Manager.

(EXHIBIT 11.)

MONTREAL, *Feb'y* 11, 1901.

J. L. English, Esq., Sec'y., Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

Complying with your request of the 7th inst., herewith enclosed please find assignment duly translated.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 12.)

MONTREAL, *Feb'y* 16, 1901.

J. L. English, Esq., Sec'y., Hartford, Conn.

246 DEAR SIR: Regarding claim No. 149,296, Tremblay, I have just received the enclosed letter from Mr. P. F. Tremblay, assignee, who appears to have written you direct.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 13.)

MONTREAL, *Feb'y* 16, 1901.

J. L. English, Esq., Sec'y., Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

I wrote you yesterday for forms No. 7-B, and am now pleased to be able to state that we have succeeded in having the parties agree to adjust their differences. The assignee, Mr. Cloutier, will accept \$1614, and the other assignee, Mr. P. F. Tremblay, the balance. The widow is ready to execute any forms which you may prepare.

As the assignees live in two different places, it would be well to forward separate checks, if it can properly be done.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 14.)

T. H. Christmas, Esq., *Manager*.

FEB. 19, 1901.

DEAR SIR: We have your letter of the 16th stating that the parties have agreed to adjust their differences, and are pleased that we were not obliged to make a judicial deposit. The enclosed forms No. 7 "b" should be executed by the widow and both assignees. We send separate forms, and the proper amount should be filled therein. On receipt of the three forms, each bearing a 25 ct. U. S. revenue stamp, we will then make separate checks.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

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(EXHIBIT 15.)

MONTREAL, *Feb'y* 18, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

On Saturday I wrote you that the differences existing between the claimants in this matter are adjusted, and hence I conclude that it is not necessary to send the enclosed letters forward, addressed to Messrs. P. F. Tremblay and Jean Baptiste Cloutier.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 16.)

MONTREAL, *Feb'y* 20, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Regarding claim No. 149,296, Tremblay, herewith enclosed please find form No. 7-B, assenting to the payment of \$1614 to Jean Baptiste Cloutier, assignee, and the balance to P. F. Tremblay, assignee. This paper, I anticipate, completes the proofs to your satisfaction?

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 17.)

FEB. 23, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: In reply to your letter of the 20th enclosing form No. 7 "b," by Arthemise D. Tremblay under policy No. 149,296, would refer you to our letter of the 19th. We regret that the Form just received was not like the one we forwarded to you in our above letter. It does not show that she is the wife of the insured. Her name is spelled differently. We return, herewith, the form and, if possible, we would thank you to see that the other form is executed and

248 a 25 ct. stamp on this form may be attached to the new one.

Yours truly,

J. L. ENGLISH, *Sec'y*.
BIDWELL.

(EXHIBIT 18.)

MONTREAL, *Feb'y* 22, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jos. O. Tremblay.

Herewith enclosed please find form No. 7-B executed by J. B. Cloutier, and at an early date a similar form executed by P. F. Tremblay will be sent you.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 19.)

MONTREAL, *Feb'y* 27, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Regarding claim No. 149,296, Joseph O. Tremblay, herewith enclosed please find the additional form No. 7-B recently asked for, and which I anticipate completes the proofs.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 20.)

FEB. 28, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: We have your favor of the 27th enclosing -orm No. 7 "b" by Mr. Tremblay under policy No. 149,296, but we have not yet received form No. 7 "b" by Patrick F. Tremblay, which we presume you will furnish soon.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

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(EXHIBIT 21.)

MONTREAL, *April* 10, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Herewith enclosed please find the receipt of the Provincial Auditor for the \$1959.49, Judicial Deposit in the matter of claim No. 149,296, Jean O. Tremblay, together with Post Office Registration receipts for the four duplicate copies of same, and notifications which were mailed to the interested.

Yours truly,

T. H. CHRISTMAS, *Manager*.

(EXHIBIT 22.)

MONTREAL, *April* 12, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: In addition to the receipt sent you on the 10th inst., in the matter of claim No. 149,296, Tremblay, herewith enclosed please find the Certificate of Deposit, which completes the matter so far as we know.

Yours truly,

T. H. CHRISTMAS, *M'g'r.*

(EXHIBIT 23.)

MONTREAL, June 14, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Herewith enclosed please find certified copy of Judgment rendered in the matter of Judicial Deposit made of claim No. 149,296, Joseph O. Tremblay, but the policy, etc., cannot be released by the Court until about two weeks have expired. The enclosed document cost \$1.30.

Yours truly,

T. H. CHRISTMAS, *Manager.*

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(EXHIBIT 24.)

JUNE 15TH, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: We have yours of the 14th enclosing copy of Judgment in the matter of deposit under policy No. 149,296, Tremblay, and we certainly do not understand why the defendants are condemned to pay to the claimants the sum of \$2018.39, with interest from April 23rd last and costs. The net amount due under our policy is \$1959.49, and we understand that the claim of Mr. Cloutier did not nearly equal this amount. Kindly let us have an explanation. We presume you will also see that we have a reply to our letter addressed to Mr. Trenholme recently.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

(EXHIBIT 25.)

MONTREAL, June 19, 1901.

J. L. English, Esq., Secy., Hartford, Conn.

DEAR SIR: Re claim No. 149,296, Jean O. Tremblay.

Responding to your favor of the 15th inst., herewith enclosed please find Agent Guay's letter supplying information respecting the Judgment recently secured by Mr. J. B. Cloutier in this matter.

Last evening I sent you letter from Mr. Trenholme in reply to your favor addressed to him under date of the 13th inst., but which was mismailed by your office to Peoria.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 26.)

MONTREAL, *June 28, 1901.*

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Regarding Judicial Deposit made in the matter of claim No. 149,296, J. O. Tremblay, herewith enclosed please
251 find the policy, together with other papers, released by the Court, the entire amount deposited with the Provincial Treasurer having been paid to Mr. J. B. Cloutier.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 27.)

AUG. 6TH, 1901.

T. H. Christmas, Esq., Manager.

DEAR SIR: Concerning our policy No. 149,296, Jean O. Tremblay, about which we have written you several times, would ask if the original papers, which we forwarded at the time we drew our check for deposit in court, cannot be released and forwarded to us. You have sent us the policy and copy of the judgment, also the assignment dated Sept. 22nd, 1885 to the Quebec Permanent Building Society of Quebec, your letter to Joseph Grondin, dated Feby. 10th, 1886, and the Aug. 1891 renewal. Cannot you now obtain the two forms No. 5,—one executed by P. F. Tremblay and the other by Jean B. Cloutier,—and the two forms No. 7 "b,"—one executed by J. B. Cloutier and the other by Arthemise D. Tremblay. It is quite likely that we will need them in the suit brought in the State of Maine. Your early attention to this will oblige

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

(EXHIBIT 28.)

MONTREAL, *June 25, 1902.*

J. L. English, Esq., Sec'y, Hartford, Conn.

DEAR SIR: Replying to your inquiry of the 23rd inst., would say, that the item of \$2.80 charged against Cloutier and Tremblay in my
252 last account was to pay for some Court certificates required by our attorney, Mr. R. W. Crockett, to use in the matter of suit at present being taken against the Company re claim under policy No. 149,296.

Yours truly,

T. H. CHRISTMAS, *Manager.*

(EXHIBIT 29.)

MONTREAL, July 7, 1903.

J. L. English, Esq., Sec'y.

DEAR SIR: I very much regret and am more than surprised that the Maine Court has not paid respect to the Judgment of Quebec in the matter of policy No. 149,296, Tremblay, and I hope that the Company will not be exposed to pay the claim twice.

On conferring with Mr. Trenholme he is naturally diffident about commenting on the decision of the Court of an adjoining State, occupying the position he now does on the Bench, but I beg to hand you enclosed herewith his letter to me of yesterday's date which speaks for itself, and by which you will observe he wishes not to be used in the case but has merely submitted for our information. You will notice that he still adheres to his opinion that according to our laws the Quebec Judgment exonerates the Company completely, and that in this country it would be observed and it would be impossible to subject the Company to costs, for the requirements of our law were fully and completely observed.

It being difficult to read Mr. Trenholme's writing readily I have made a press copy of his letter and I enclose it herewith.

Yours truly,

T. H. CHRISTMAS, *Manager*.

253

(EXHIBIT 30.)

FEB. 7, 1901.

P. F. Tremblay, Esq., Attorney-at-law, Lewiston, Me.
(Thro' T. H. Christmas.)

DEAR SIR: We have your letter of the 4th concerning claim under policy No. 149,296, Tremblay. We beg to say that we have on file an assignment by the insured under date of Nov. 24th, 1891, to J. B. Cloutier of Quebec. Claim is made by Mr. Cloutier for the full amount due under the policy, and he states that the consideration for such assignment was "several loans and for the premiums paid by him since 1891." He enclosed a statement, from which it appears that the indebtedness amounts to \$2560.85. The policy is only for \$2000. You will see that the assignment to him ante-dates yours. Does the widow recognize the right of Mr. Cloutier to collect the full amount?

We have just received form No. 5 by you, in which you claim all the policy, but what is excepted by the assignment, and which you state is between \$500 and \$1000. This does not agree with the claim made by Mr. Cloutier. We hope your difference with Mr. Cloutier may be amicably adjusted; otherwise we presume there will be considerable expense in making proper settlement of the policy. Let us hear from you.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 31.)

MAR. 1ST, 1901.

P. F. Tremblay, Esq., No. 256 Lisbon St., Lewiston, Me.
(Thro' T. H. Christmas, Manager.)

DEAR SIR: We are in receipt of your letter of the 28th concerning claim under policy No. 149,296, Tremblay. We have received papers by the insured's widow and Mr. Cloutier, assenting to
254 our paying you \$345.49, and the balance to Mr. Cloutier. We note what you say in regard to the interest of Mr. Cloutier, and will write him today concerning same. Are we to understand that you will have recourse to law within a few days if he continues to refuse to prove his claim to you, sustained by the necessary documents, proving his right to the amount claimed by him? We still hope that you will be able to arrange an amicable settlement of this policy, and if this cannot be done, we presume from what is stated in your letter that you will bring suit against him in Quebec. The claim under this policy is not due and payable by the Company until April 31st. If you cannot make any arrangement with Mr. Cloutier cannot you make an arrangement whereby the Company can pay the entire amount due under this policy to some person agreeable to both you and Mr. Cloutier, who can hold the amount in trust to await the result of the suit, which we understand you will institute against him in Quebec. In this way the Company can pay the amount to said person, getting a good and satisfactory release of the policy. Then the trustee can hold the amount in accordance with any agreement between you and Mr. Cloutier. We wish to say that the Company is willing and ready to pay the amount of this claim as soon — we can get a legal and satisfactory release, and trust you will not put us to any further expense in the matter. Kindly let us hear from you.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 32.)

MARCH 9TH, 1901.

P. F. Tremblay, Esq., Attorney-at-law, No. 256 Lisbon St., Lewiston, Me.
(Thro' T. H. Christmas, Mgr.)

DEAR SIR: We are today in receipt of a letter from Mr.
255 Cloutier, concerning claim under policy No. 149,296. He states that his claim on this policy has no connection with any transaction previous to 1889: that under date of April 16th, 1889, Mrs. Tremblay, acting as attorney for her husband, borrowed from him the sum of \$541 to be remitted by monthly installments of \$25.00 each, and gave this policy as security. On account of the insured losing his position Mr. Cloutier says he never got a cent on

this loan, and that during 10 years he has regularly paid to the Company the premiums on this policy, which premiums, with interest, amount to \$1073.36, and that the loan of \$541 with interest amounts to 968.84; the two amounts making a total of over \$2042.00, which he states is his claim, and is just, reliable and undeniable, though he has agreed to accept the amount mentioned in our previous letter. What have you so say?

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 33.)

MARCH 18TH, 1901.

P. F. Tremblay, Esq., No. 256 Lisbon St., Lewiston, Me.
(Thro' T. H. Christmas, Manager.)

DEAR SIR: Your letter of the 12th through Mr. Christmas, concerning claim under policy No. 149,296, Tremblay, has been forwarded us for reply. We note what you say in regard to bringing suit against Mr. Cloutier, but we would like to write Mr. Cloutier today in regard to same, and see if he has anything further to say. In the meantime will you kindly give us the name of the Court in which you will bring suit against Mr. Cloutier. As soon as we hear from him we will advise you.

Yours truly,

J. L. ENGLISH, *Sec'y.*
BIDWELL.

256

(EXHIBIT 34.)

MAR. 26TH, 1901.

P. F. Tremblay, Esq., No. 256 Lisbon St., Lewiston, Me.
(Thro' T. H. Christmas.)

DEAR SIR: We are today in receipt of a letter from J. B. Cloutier concerning policy No. 149,296, Tremblay. Mr. Cloutier states that you are laboring under a false impression in regard to the circumstances in connection with the assignment. He states he can produce legal proof for each premium payment made by him: that the first installment on the loan of August 1869 was to commence the first of May, 1891, nearly a year after Mr. Tremblay had resigned his position as Crown Land Agent, and that the Quebec Loan Society could not pay Mr. Cloutier anything on Mr. Tremblay's salary, since he had no salary at that time, and that to secure the payment of the loan of \$541 he has regularly paid the Company the premiums on the policy, and that had he not done so it would have been void like those Mr. Tremblay had in other companies; that he also has the consent of Mrs. Tremblay to our paying him \$1614.00. It would, therefore, appear that he most certainly has a right to this extent in the policy, and we would thank you to re-consider the matter and let us have the necessary papers so the policy can be paid

soon in accordance with our recent letter. Please let us hear from you.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 35.)

FEB. 16, 1901.

Jean Baptiste Cloutier, Esq., Quebec, Province of Quebec.
(Thro' T. H. Christmas, Mgr.)

257 DEAR SIR: We are just in receipt of a letter from Mr. P. F. Tremblay of Lewiston, Me., in regard to your claim under policy No. 149,296, Tremblay. He states that there were several contracts between you and his father, and especially under dates of April 16th, 1887, May 17th, '87, May 26th, '87, Sept. 24, '87, August 13th, '88 and April 16th, '89; that certain amounts have been paid you on account of same, and that you are not entitled to the full amount due under the policy. It will be a matter of regret if this case cannot be amicably settled between you and Mr. Tremblay, and we trust that you will give the matter your careful consideration, and let us hear from you in regard to your intentions.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 36.)

MARCH 1ST, 1901.

Jean Baptiste Cloutier, Esq., Quebec, Province of Quebec.
(Thro' T. H. Christmas, Manager.)

DEAR SIR: We have just received a letter from P. F. Tremblay, dated Feb. 28th, concerning policy No. 149,296, in which he considers himself aggrieved on account of your not having furnished proof of your interest on account of this policy. He claims that it is no more than right and proper that you furnish same. He threatens suit in case a satisfactory arrangement cannot be made. We enclose, herewith, a letter written by us Feb. 16th to you, and which was not delivered because we understood you and Mr. Tremblay had come to an understanding. It will be a matter of regret if this matter cannot be adjusted without a law-suit.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

258

(EXHIBIT 37.)

MARCH 9TH, 1901.

Jean Baptiste Cloutier, Esq., Quebec, Province of Quebec.

(Thro' T. H. Christmas, Mgr.)

DEAR SIR: We have your letter of the 6th concerning claim under policy No. 149,296, Tremblay, and will today write Mr. P. F. Tremblay concerning same.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

(EXHIBIT 38.)

MARCH 18TH, 1901.

Jean Baptiste Cloutier, Esq., Quebec, Province of Quebec.

(Thro' T. H. Christmas, Manager.)

DEAR SIR: We are in receipt of a letter from P. F. Tremblay concerning claim under policy No. 149,296. He states that the contract for \$541 mentioned by you is the same contract referred to by him, and that you have not given his father credit for the \$405.00 paid to you through the Quebec Bldg. Society, and that you have also claimed for more premiums than you should have done. In his letter of the 12th, just received, he states that he has decided to bring action against you. Is there no way in which this claim can be settled without an action being brought?

Trusting to hear from you soon, we remain,

Yours truly,

J. M. ENGLISH, *Sec.*
BIDWELL.

259

(EXHIBIT 39.)

FEB. 23, 1901.

P. F. Tremblay, Esq., Attorney-at-law, Lewiston, Me.

(Thro' Mr. T. H. Christmas.)

DEAR SIR: In reply to your letter of the 21st, would say that we did not answer your letter of the 12th because we understand that your differences with Mr. Cloutier had been settled. We now enclose a copy of the assignment to Mr. Cloutier, dated Nov. 24th, 1891. We would also call your attention to the fact that both the insured and wife recognized the assignment to Mr. Cloutier in the assignment to you last January. The Company cannot undertake to settle your differences, and if Mrs. Tremblay authorizes the Company to pay Mr. Cloutier a certain amount we may be legally obliged to, as he holds a prior assignment to you. We hope there will be no further disagreements between you and Mr. Cloutier.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 24th day of December, A. D. 1903, the within named deponent personally appeared before me, at my office No. 50 State Street at the City of Hartford, in said County, being the day appointed by me for that purpose, was first sworn by me according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which his within deposition was to be taken; and then being examined on oath on the interrogatories of the plaintiff in said action, and the cross-interrogatories of the defendants therein which were attached to my said commission, according to law gave on oath the within deposition, which was written on a typewriting machine by Mary E. Kellogg, a disinterested person in the presence and under the direction of myself; and after the
260 said interrogatories and cross-interrogatories were carefully read to the witness, he made answer thereto, and in the language herein expressed in his answers to such; and after the said deposition had been carefully read by me to said deponent it was then subscribed by him in my presence, and sworn to by said deponent, the oath being administered by me, as such Commissioner at the place and on the day here last aforesaid.

Said deposition was taken upon the commission issued and hereto attached, and none of the parties to said suit were present, nor was there any person present when the same was taken except the said deponent, Frank W. Bidwell, Mary E. Kellogg, who wrote the same in the presence of the Commissioner, and the Commissioner.

The cause in which it is to be used is an action in equity in which the Aetna Life Insurance Company is plaintiff and Patrick F. Tremblay et al. are the defendants, which is now pending in the Supreme Judicial Court, within, and for the County of Androscoggin, in the State of Maine.

The cause of taking said deposition, is that the deponent does not reside in the State of Maine, but is a resident of the State of Connecticut.

Witness my hand and seal at said Hartford, the day and year first named.

ALBERT C. BILL, [L. s.]
Commissioner.

PLFF. EX. FF.

1200. In any case in which a voluntary deposit is made under this section of any amount due in virtue of any registered claim, the depositor shall cause a duplicate of the deposit receipt to be registered and left with the registrar, and an entry thereof shall be made in the margin of the register opposite the title under
261 which the claim exists; and such registration and entry shall have the same effect as regards the cancelling of the registration of the claim, as the registration and entry of a discharge from the creditor for a like amount would have had. 35 v., c. 5, s. 12.

PLF. Ex. GG.

I, the undersigned, authorize the notary, Arthur Tremblay, of Quebec, to draw from Mr. Cloutier, the money which I borrow this day.

Quebec, 6 April '87.

ARTH. D. TREMBLAY.

Received of J. B. Cloutier Esq. a check for the amount of two hundred and fifty piasters (dollars?) in virtue of the procuration on the other side.

Quebec, 19 April '87.

A. TREMBLAY, N. P.

PL'FF Ex. HH.

H. W. O.

Before the Notary Public, residing in Quebec, undersigned, Is Present: Lady Arthemise Dumais, actually in Quebec, and living in the town of Chicoutimi, county of the same name, acting here as a special proxy of her husband, Jean Ovide Tremblay, Esquire, Surveyor and Agent, living also in Chicoutimi, following procuration under private seal, dated at Chicoutimi the eleventh day of the present May, and annexed to the presents—

Who, in this capacity, acknowledges and confesses to have borrowed and to quite lawfully owe to Jean Baptiste Cloutier Esq. professor, living in the City of Quebec at the present time and acceptor, the sum of two hundred and forty (dollars?) piasters, capital and interest, in so much as the said Jean Baptiste Cloutier has
262 loaned and actually given over to her in (1) money good (1) (money) current before the execution of (2) by proxy the presents, so that the debtor (2) acknowledges it and declares herself satisfied with it;—

Which sum the said Lady Arthemise Dumais, by proxy, promises and binds herself for the debtor, his heirs and assigns to pay to the said Jean Baptiste Cloutier, or order, bearer of the presents, in good current money, between today and the first of March of the year one thousand eight hundred eighty-nine as follows, namely:—

Forty (dollars?) piasters the first day of December next, forty (dollars?) piasters the first day of January next (1888), and a sum of ten (dollars?) piasters per month, payable the first of each month, from the first of February next, inclusively, to the first of January, one thousand eight hundred eighty-nine, inclusively (that is, during eleven months ten (dollars?) piasters per month). And as to the balance of fifty (dollars?) piasters, it shall be payable in two equal payments of twenty-five (dollars?) piasters each, one of which shall be made the first of February and the other the first of March of the year one thousand eight hundred and eighty-nine.—

Which sum, capital and interest shall be thus payable and reimbursable by the Permanent Construction Company (Society) of Quebec, with the consent of the said Lady Arthemise Dumais, by

proxy, to the said Jean Baptiste Cloutier, out of and from the salary to which the said J. O. Tremblay has right as agent of the Crown Lands and Forests, for the agency of the Lake St. John, Eastern Division, which salary the said society must draw from the Government of the Province of Quebec, in virtue of a Transfer by the said J. O. Tremblay, in favor of the said society, dated at Quebec, the thirty-first of July, 1885, before Charlebois N. P. which transfer has been duly signified to the said government of the Province of Quebec.

263 The said Lady Arthemise Dumais, by proxy, transfers to the said Jean Baptiste Cloutier, or order, the sum of three hundred (dollars?) piasters, to be assumed, in case of the death of the said J. O. Tremblay, upon an insurance policy issued by the "Ætna" Insurance Company, bearing the number 149,296, dated at Hartford, Connecticut, United States of America, the thirteenth of August, one thousand eight hundred eighty-five, to the amount of two thousand piasters: which policy is to-day transferred to the said Society of Permanent Construction (3) by proxy of Quebec, which the said Lady Arthemise Dumais (3) authorizes to effect the said payment of three hundred piasters (dollars?)

The said Lady Arthemise Dumais promises and binds herself to have this transfer of three hundred piasters ratified by her said husband, J. O. Tremblay, as well as that made in favor of the same Mr. J. B. Cloutier, the sixteenth of April last, in an Obligation document by the said Lady Tremblay, by proxy, in favor of the said J. B. Cloutier, as soon as she shall have arrived at Chicoutimi; which ratification shall be made before a Notary.

The said Lady Arthemise Dumais, by proxy, yields and transfers moreover the Salary of her said husband which should be payable by the Commissioner of the Crown Lands and this to the amount of the payments above, and upon the dates upon which these payments shall be due, as above mentioned, reaching the value at which the said salary shall be reconveyed to the said J. O. Tremblay, upon payment and disinterestedness of the said Society of Construction.

The said Lady Tremblay, by proxy, promises to conform in all points to the authorization possessed (?) at the minute of the presents.

The payments shall be made at the office of the said Permanent Construction Society of Quebec for as long a time as it shall remain the grantee of the said salary, and afterwards at Quebec, at 264 the office of the Agent of the Crown Lands or of the Treasurer of the Province, according to circumstances.

And for the execution of the presents the parties choose settlement in their own respective residences.

Of which Act Made and Passed at Quebec in the Office of Notre Arthur Tremblay, the said Notary, the year one thousand eight hundred eighty-seven, the seventeenth day of May, under the number eighty-nine.

And have signed, reading having been made.

(Signed)

"J. O. TREMBLAY."

By "ARTH. D. TREMBLAY."

"J. B. CLOUTIER."

"ARTH. TREMBLAY, N. P."

True copy of the minute on record in my Office.

ARTH. TREMBLAY, N. P.

Copy.

Copy of the Procuration Annexed to the Minute of the Above Document.

I, the undersigned, Jean Ovide Tremblay, surveyor and agent of the Crown Lands and Forests, living in Chicoumiti, in the county of the same name, authorize by these presents my wife, Arthemise Dumais, to borrow for me and in my own name, the sum of two hundred piasters, (dollars?) reimbursable upon the terms and conditions which she shall fix with the borrower out of and from the salary which I draw and which I shall draw as agent of the Crown Lands and Forests for the agency of the Lake St. John, Eastern Division, to which ends I authorize her to give an order and to have it accepted by the Permanent Construction Society of Quebec, grantee of my said salary in virtue of a notarial transfer, which society I equally authorize to accept in this way and to effect the said reimbursement for me and in my name upon my salary as above stated.

And reaching the value at which the transfer, of which it is above spoken in favor of the said society, would no longer
265 have reason for existing, either by the reimbursement to the said society of that which I owe to it, or otherwise. I authorize by these same presents the department of the Crown Lands, at Quebec, in the person of Mr. E. E. Taché, or his successor in office, to pay and reimburse upon the terms and conditions which my said wife shall stipulate, the lender of the amount above, both his interest and just costs, if there is occasion.

I promise, moreover, and I authorize my said wife to stipulate in this way, in case that I should accept another position in place of that of agent of the Crown Lands, which I hold at the present time, to transfer my salary in order to effect this reimbursement and the reimbursement of the money due Mr. J. B. Cloutier, of Quebec, in the same way as my said wife shall have agreed and will agree in regard to my actual salary.

In witness whereof I have signed at Chicoutimi this eleventh day of May, one thousand eight hundred and eighty-seven.

(Signed)

"J. O. TREMBLAY."

Certified true copy of the original annexed to the minute, three words erased.

ARTH. TREMBLY, N. P.

PL'F's EXH. JJ.

LEWISTON, ME., January 25, 1901.

T. H. Christmas, Esq., Montreal, P. Q.:

In Re Policy, No. 149,296 on life of J. O. Tremblay.

DEAR SIR: In answer to yours of the 21st inst. I wish to let you

know that there is about \$1500.00 due J. B. Cloutier of Quebec by
 266 my father for which sum, my father, I believe, has given a
 collateral assignment to Mr. Cloutier; but I will leave this
 one prove his claim. As to the other assignment in favor of
 the Permanent Building Society of Quebec; this Society has been
 paid and I will get the release of the said Society at once.

As my father died on the 21st, and that I wish this matter to be
 settled now, I take the liberty to ask you to send me the blanks,
 "Proof of Death" and other forms of the Company that I need of, to
 prove my claim as assignee, if Mr. Cloutier has not seen to it now.

An immediate answer will oblige me.

Respectfully yours,

P. F. TREMBLAY.

PLF's EXH. KK.

LEWISTON, ME., *January 31, 1901.*

T. H. Christmas, Esq., Montreal, P. Q.

DEAR SIR: I take the liberty to ask you to request Mr. J. B. Clou-
 tier, assignee of policy No. 149,296, to furnish his account at once; as
 I am assignee myself it is only just for him to show his claim so that
 I may settle the matter and come to an agreement, and so avoid delay
 and trouble. I wish you would do so and let me know when it will
 be possible for me to see such account. Please let him know that it
 is not sufficient to claim but that he must prove his claim and for
 that purpose that it is necessary for him to show all documents he
 may have specially the following contracts made between him and
 my father; one April 16, 1887, one May 17, 1887, one May 26,
 1887, one September 24, 1887, one August 31, 1888, and one April
 16, 1889. And also his account for premiums that he has paid on
 the policy No. — before mentioned since 1891 exclusively, the pre-
 267 mium for that year having been paid by the Quebec Perma-
 nent Building Association. His account must be complete,
 showing that he received \$294.00 in 1887, \$275.00 in 1889,
 and \$405.00 in 1890. This is what will show that there is a bal-
 ance of about \$600.00 remaining due to me. As I believe that this is
 the shorter way to come to a settlement of this affair I hope that I
 will hear from you soon.

Respectfully yours,

P. F. TREMBLAY.

(*Translation.*)

T.

Mr. Guay, Esq.

SIR: As I suppose that it will delay things less, I send you this
 letter to your address, which I had at first thought of sending to the
 Company. Please let me know if you are going to speak to Mr.
 Cloutier in regard to this, and in that case I desire to know the result;
 first, it is his duty and his interest, if he wishes not to have any
 trouble, to come to my request.

Yours truly,

P. F. TREMBLAY.

PL'FF EX. Y.

(Copy of Record.)

STATE OF MAINE,

Androscoggin, ss:

At the Supreme Judicial Court Begun and Held at Auburn, Within and for the County of Androscoggin, on the Third Tuesday of April, Being the Twenty-first Day of said Month, A. D. 1903, by Honorable Albert M. Spear, Justice.

No. 654.

PATRICK F. TREMBLAY, of Lewiston, in the County of Androscoggin and State of Maine, Plaintiff,

versus

THE ÆTNA LIFE INSURANCE COMPANY, a Corporation Duly Established by Law and Having its Office and Principal Place of Business at Hartford, in the State of Connecticut, and Doing Business in the State of Maine, and Having for its Agent and Attorney in the State of Maine the Insurance Commissioner of the State of Maine, Whose Office is at Augusta in the County of Kennebec and State of Maine, Defendant.

(Writ printed elsewhere in this case.)

This action was entered in this Court at the September term, A. D. 1901, and the said plaintiff appeared for himself and by
269 Oakes, Pulsifer and Ludden, his Attorneys, and the defendant appeared by Ralph W. Crockett, Esquire, its Attorney, and the cause was thence continued to the January term, A. D. 1902.

(Pleadings printed elsewhere in this case.)

Whereupon the cause is committed, on the sixteenth day of the term, to a jury impaneled and sworn according to law, and on the seventeenth day of the term the cause is withdrawn from the jury and transferred on report, at the expense of the defendant to the next term of the law Court at Portland for adjudication upon matters of law arising in the case, and seasonably certified by the Clerk of this Court to the Clerk of the Law Court for said term, and now, to wit, on the twenty-sixth day of June, A. D. 1903, the Clerk of this Court receives from the Clerk of the Law Court at Portland the mandate, as follows, viz:—

“Judgment for the plaintiff for \$1,959.49 and costs, and interest from April 21st, 1901, ninety days after the death of the insured.” Judgment for the plaintiff, May 22nd, A. D. 1903.

PL'FF Ex. AA.

(Exhibit 1.)

Part of J. B. Cloutier's Deposition, Page 84.

CANADA,
Province of Quebec,
District of Quebec:

Superior Court.

JEAN-BAPTISTE CLOUTIER, of the City of Quebec, Late Professor and
 Gentleman, Plaintiff,

vs.

JEAN OVIDE TREMBLAY, of the Town of Chicoutimi, Surveyor, and
 P. COLOZA of the Town of Chicoutimi, and al., Tiers-saisis.

270 Jean-Baptiste Cloutier, of the City of Quebec, late professor and gentleman, Being Duly Sworn Deposes And Says:

That Jean-Baptiste Tremblay of the town of Chicoutimi, surveyor, is personally indebted towards him to the amount of Five Hundred and Forty-one Dollars, current, for the following causes and reasons; viz: to the said sum of five hundred and forty-one dollars for equal amount of money loaned and advanced by him, said Jean Baptiste Cloutier, to the said Jean Ovide Tremblay in the City of Quebec on or about the sixteenth day of August One Thousand Eight Hundred and Eighty-Nine, and recognized by the said Jean Ovide Tremblay, by an Act of Obligation, consented to by the said Jean Ovide Tremblay, in his favor of the Sixteenth of August, One Thousand Eight Hundred and Eight-nine, and which will be produced to support these presents.

That the said Deponent is informed in a sure and creditable manner, has all reason to believe, firmly and conscientiously believe that the said Jean Ovide Tremblay is about to conceal his goods, debts and effects with the intention to defraud his creditors in general and the said deponent in particular, and the said diplomat believes furthermore, and firmly believes, that without the benefit of an order of saisie arret before judgment of the goods, debts and effects of the said Jean Ovide Tremblay into the hands of P. Coloze, of the town of Chicoutimi, and of the Societe de Construction Permanente de Quebec, political and incorporate body having its principal establishment in the City of Quebec, Tiers-Saisis, the said Deponent will lose his debt and sustain damage and the said Deponent has signed.

(Signed)

J. B. CLOUTIER.

Sworn To Before Me At Quebec This 14th Day Of Sept., 1891.

(Signed)

P. MALOIN, D. P. S. C.

True Copy.

ALPH. BOISSONNEAULT,

Dep. P. S. P.

(Copy.)

271

Ætina Life Insurance Company.

HARTFORD, CONN., *July 8th*, 1903.

Mr. J. B. Cloutier.

DEAR SIR: Will you kindly make without costs, transfer to us of Policy No. 149,296, on the life of the late J. O. Tremblay?

We need the transfer of any rights you may have in it, to meet the litigation between us and Patrick F. Tremblay. It is agreed and well stipulated, that the transfer you are requested to make over to us, will be without any warranty whatever on your part, and that in case the result of above litigation should be adverse to us, you will not be called upon to reimburse the amount of said Policy paid and deposited by our Company in the case No. 1070—Superior Court, Quebec—J. B. Cloutier vs. The Heirs J. O. Tremblay and the Ætina Insurance Co., and adjudicated in your favor by the judgment in the above case, on the eighth of June, 1901.

Very truly yours,

J. L. ENGLISH, *Sec'y*.

H. W. O.

See item No. 1 of my account.

QUEBEC, *March 19*, 1890.

J. O. Tremblay owes to J. B. Cloutier.

| | | | | |
|-----------|----------|------------|--------|----------|
| 1888. | | | | |
| Mar. 28. | For loan | No. 1..... | 125.00 | |
| Sept. 26. | " " | No. 2..... | 125.00 | |
| " 1889. | | | | |
| Feb. 26. | " " | No. 3..... | 120.00 | |
| | | | <hr/> | \$370.00 |

272

| | | | | |
|---------------------|---------------------------------|--|-------|--------|
| 1888. | | | | |
| June 27, '88. | Received ac. of the Dep. of the | | | |
| | Lands (?) | | 15.38 | |
| Sept. 26. | By check | | 17.84 | |
| Dec. 4. | " " | | 50.93 | |
| 1889. | | | | |
| Feb. —. | " " | | 91.80 | |
| July 22. | " " | | 4.25 | |
| '91. | | | | |
| Sept. 17. | " " | | 45.07 | |
| March 19. | " " | | 97.22 | |
| | | | <hr/> | 315.11 |
| Remainder Due | | | | 54.89 |

Endorsed on back by Alex. Gauvreau.

See item No. 4 of my account.

H. W. O.

DEPARTMENT OF CROWN LANDS,
QUEBEC, 16 June, 1890.No. 328.
\$76.xx.

Received from Mr. J. B. Cloutier the sum of Seventy-six dollars being part of the collections made by Mr. J. O. Tremblay, in his capacity of late Crown Lands and Timber Agent in Chicoutimi—

E. E. TACHÉ,
Assistant Commissioner.

Endorsed on back by Alex. Gauvreau.

QUEBEC, January 7, 1901.

Mr. J. O. Tremblay on account with J. B. Cloutier.

1889.

March 19—Deficit on bill No. 3 paid by me to the Government \$54.89

See my answer to question No. 8.

273 August 16—Loan to J. O. Tremblay on assignment of wages (Notary Duval) 541.00

See my answer to question No. 10, and see contract.

August 16—Fees paid to Notary Duval for deeds and legal notices 10.00

See my answer to question No. 11.

1890.

June 16—Deficit on bill No. 4 paid by me to the Government 76.00

See my answer to question No. 12.

April 30—Loan to H. A. Tremblay to pay his dues to the Government 100.00

See my answer to question No. 13.

1891.

Oct. 27—Money loaned to Mrs. J. O. Tremblay 25.00

See my answer to question No. 14.

1894.

January—Re Coloza Blair expenses of Court paid to Robitaille & Roy 44.00

Interest on ten years on \$850.89 at 6% 636.60

Premiums and interest on ten years at 6% on Policy No. 149,296 1,073.36

\$2,560.85

Certified to be correct.

J. B. C.

Endorsed on back by Alex. Gauvreau.

H. W. O.

[May it] It will please the Honorable Commissioner of the Crown Lands, to pay to Mr. J. B. Cloutier, the sum of one hundred twenty-five piasters (dollars) upon the commission which is granted
 274 to me upon the receipt of the money proceeding from the public Lands, as it shall become due, up to the entire payment of this authorization.

Quebec, May 28, 1888.

J. O. TREMBLAY,
 By ARTH. D. TREMBLAY.

Paid.

G. E. D.

Memo. by Mr. Morin. See item No. 1, answer to question No. 8 of my deposition.

Several words of one phrase are effaced making it impossible for us to understand the same, and is signed

E. E. TACHÉ,
Assistant Comm. C. Lds.

On back is endorsement as follows:

\$125.00

Paid.

H. W. O.

\$25.

QUEBEC, 27 Nov., 1891.

Upon demand pay to the order of the Permanent Construction Company (Society) Twenty-five Dollars for value received and charged to the account of A. M. J. B. Cloutier, Quebec.

J. O. TREMBLAY,
 By ARTH. D. TREMBLAY.

Endorsed on back, Alex. Gauvreau.

It will please the Honorable Commissioner of the Crown Lands to pay to Mr. J. B. Cloutier or to his lawful representatives the sum of two hundred (dollars) piasters upon the commission which is
 275 granted to me upon the receipt of the money proceeding from the public lands as it shall become due up to entire payment of the sum above mentioned without interest.

Noted D. C. Mackenzie Acc't C. S. D. 271.

Quebec, May 27, 1890.

H. A. TREMBLAY,
 By ARTH. D. TREMBLAY.

Endorsed: Alex. Gauvreau, N. P.

QUEBEC, 14 Septembre, 1891.

Jean B. Cloutier vs. Jean Ovide Tremblay, and P. Coloza, Tiers-Saisi and La Société de Construction Permanente de Quebec, Tiers-Saisie, and Alexandre Blair, Tiers-Saisi.

Mémoire de Frais.

| | |
|------------------|----------------|
| Bref | \$3.00 |
| Copie | 1.80 |
| Bref | 1.50 |
| Affidavit | 8.00 |
| Mémoire | 1.00 |
| Honoraires | 18.00 |
| Alias bref | 1.50 |
| 2 Copies | 1.30 |
| Affidavit | 8.00 |
| Total | <u>\$44.00</u> |

Payé, 8 Janvier, 1894.

(Signé)

"ROBITAILLE & ROY."

True Copy.

See item No. 7 of my account and my answer to question No. 15 of my deposition.

Endorsed on back: Alex. Gauvreau, N. P.

276 Department of the Crown Lands P. Q.

QUEBEC, *February* 26, 1889.*Memorandum.*

To the Hon. Commissioner Crown Lands, Quebec:

It will please the Honorable Commissioner to pay to Mr. J. B. Cloutier or to his order the sum of \$120.00 upon the Commission which will become due after payment of the second authorisation already accepted.

J. O. TREMBLAY,
By ARTH. D. TREMBLAY.

I beg the Hon. Commissioner to make this payment which will oblige,

GEO. DUMAIS, N. P. P.

Feb. 26, 1889.

Granted but only as in the ordinary circumstances can such commissions become due, G. E. D.

Society of Permanent Construction of Quebec.

Folio —.

QUEBEC, Feb. 13, 1891.

Received of Mr. J. B. Cloutier the following sum namely:

| | | |
|--|--------------|---------|
| Movable Shares..... | Payment upon | action |
| Principal | Payment upon | action |
| Capital lent..... | | Payment |
| Interest | | |
| Interest upon arrears..... | | |
| Hire | | |
| Cost of borrowing..... | | |
| Premium of Insurance on account of J. O. Tremblay..... | | \$13.02 |
| Deposit | | |

\$13.02GOURDEAU, *Secretary*.

277 It will please the Honorable Commissioner of the Crown Lands to pay to J. B. Cloutier, Esquire, the sum of one hundred twenty-five (dollars) piasters upon the Commission, as it shall become due, after reimbursement of the draft already given in the month of June last.

Chicoutimi, September 26, 1888.

J. O. TREMBLAY,
By ARTH. D. TREMBLAY.

Defense.

DEF'T EX. A.

R. W. C.

QUEBEC, January 2d, 1902.

Extract from the books of the Society for the accounts paid by the Permanent Construction Society of Quebec to Mr. J. B. Cloutier on the salary of the late Mr. J. O. Tremblay or for him.

1889.

| | | | | |
|-------|----|------|---------------------|---------|
| April | 2. | Paid | 1st Instalment..... | \$25.00 |
| May | 1. | " | 2nd " | 25.00 |
| June | 5. | " | 3rd " | 25.00 |
| July | 3. | " | 4th " | 25.00 |
| Aug. | 1. | " | 5th " | 25.00 |
| Sept. | 2. | " | 6th " | 25.00 |
| Oct. | 1. | " | 7th " | 25.00 |
| Nov. | 2. | " | 8th " | 25.00 |
| Dec. | 3. | " | 9th " | 25.00 |

1890.

| | | | | |
|------|----|---|--------------|-------|
| Jan. | 3. | " | 10th " | 25.00 |
| Feb. | 3. | " | 11th " | 25.00 |

\$275.00

278

| | | | | | |
|-------|-----|---|-------|---------|----------|
| Apr. | 1. | " | ..... | \$45.00 | |
| May | 2. | " | ..... | 45.00 | |
| June | 3. | " | ..... | 45.00 | |
| July | 5. | " | ..... | 45.00 | |
| Aug. | 7. | " | ..... | 45.00 | |
| Oct. | 2. | " | ..... | 45.00 | |
| Nov. | 10. | " | ..... | 45.00 | |
| Dec. | 3. | " | ..... | 45.00 | |
| 1891. | | | | | |
| Jan. | 3. | " | ..... | 45.00 | |
| | | | | <hr/> | 405.00 |
| | | | | | <hr/> |
| | | | | | \$680.00 |

A true copy.

ALP. COTE, *Treasurer.*

Permanent Construction Society of Quebec.
Quebec, January 2nd, 1902.

DEPT EX. B.

R. W. C.

Extract from the books of the Permanente Construction Society of Quebec for the sums hereafter paid by said Society to Mr. J. Baptiste Cloutier on the salary of the late J. O. Tremblay or for him.

1888.

| | | | | |
|------|----|------|---------------------|---------|
| Feb. | 1. | Paid | 1st Instalment..... | \$25.00 |
| Mar. | 1. | " | 2d "..... | 25.00 |
| Apr. | 2. | " | 3d "..... | 25.00 |
| May | 3. | " | 4th "..... | 25.00 |
| June | 1. | " | 5th "..... | 25.00 |
| July | 1. | " | 6th "..... | 25.00 |
| Nov. | 7. | " | 7th "..... | 25.00 |
| Dec. | 3. | " | 8th "..... | 25.00 |

279

1889.

| | | | | |
|------|----|---|-------------|----------|
| Jan. | 5. | " | 9th "..... | 25.00 |
| Feb. | 2. | " | 10th "..... | 25.00 |
| Mar. | 2. | " | 11th "..... | 25.00 |
| | | | | <hr/> |
| | | | | \$275.00 |

A true copy.

ALPH. COTE, *Treasurer.*

Permanente Construction Society of Quebec.
Quebec, Jan. 2, 1902.

DEF'T EX. C.

Extract from the Ledger of the Lands of the Crown.

In re J. O. TREMBLAY and J. O. CLOUTIER.

Orders on Commission.

| | | | | | |
|---|-----------------------------|------------------------------|----------|---------|---------|
| 1888. | | | | | |
| May 1. | First | order to J. B. Cloutier..... | \$125.00 | | |
| Sept. 29. | Second | " " " " | 125.00 | | |
| 1889. | | | | | |
| Feb. 3. | Third | " " " " | 125.00 | | |
| 1890. | | | | | |
| May 27. | Fourth | " " " " | 200.00 | | |
| | | | | | \$575. |
| 1888. | | | | | |
| June 27. | Paid to J. B. Cloutier..... | | | \$15.38 | |
| Sept. 20. | " " " " | | | 17.87 | |
| Nov. 27. | " " " " | | | 58.93 | |
| 1889. | | | | | |
| Feb. 26. | " " " " | | | 91.80 | |
| July 22. | " " " " | | | 4.26 | |
| Sept. 12. | " " " " | | | 45.07 | |
| 1890. | | | | | |
| Feb. 20. | " " " " | | | 97.22 | |
| Apr. 8. | " " " " | | | 44.47 | |
| Sept. 16. | " " " " | | | 26.01 | |
| Nov. 15. | " " " " | | | 21.26 | |
| 280 | | | | | |
| 1891. | | | | | |
| Feb. 6. | " " " " | | | 12.22 | |
| May 14. | " " " " | | | 100.96 | |
| | | | | | 535.45 |
| Balance due to J. B. Cloutier, by Mr. J. Tremblay.. | | | | | \$39.55 |

E. F. T.

Québec, Sept. 7, 1901.

J. C.

A. H.

QUEBEC, *January 27, 1901.*

1889.

1890.1891.

1894.

\$2560.85

1890.

\$2675.85

H. W. O.

July 251784.89

955.00

829.89

282

DEF'T EX. F.

(Translation.)

QUEBEC, February 14, 1892.

Messrs. J. O. and H. A. Tremblay to J. B. Cloutier.

Dr.

| | | | |
|------------|--|--------|----------|
| 1887. | | | |
| Sept. 24. | To obligation (before Notary L. P. Sirois)... | 310.00 | |
| 1888. | | | |
| Aug. 30. | Balance due under agreements of April 16, 1887, of May 17, 1887, and May 26, 1887, included in notarial act executed before Notary E. E. Belanger..... | 479.00 | |
| 1889. | | | |
| August 16. | To agreement before Notary P. E. Duval.... | 541.00 | |
| 1891. | | | |
| Jan. 1. | 2 years and 2 months' interest on \$50 (not paid when due)..... | 10.84 | |
| " " | 10 months' interest on \$25 (not paid when due)..... | 2.10 | |
| " " | 4 months' interest on \$45 (not paid when due)..... | 1.50 | |
| Feb. 13. | Paid part premium of Insurance S. C. P. Q.. | 13.02 | |
| | | | 1,357.46 |

Cr.

| | | | |
|---------|---------------------------|--------|--|
| 1891. | | | |
| Jan. 3. | By cash to this date..... | 805.00 | |
| | Balance due | 552.46 | |

Dr.

| | | | |
|-----------|---|-------|-------|
| August —. | Paid premium of insurance..... | 42.02 | |
| 1892. | | | |
| Feb. 14. | 6½ months' interest on insurance.... | 2.28 | |
| | | | 44.30 |
| 283 | | | |
| Feb. 14. | 1 year and 1 month interest on 11.25..... | 1.30 | |
| " | 9½ months' interest upon 25.00..... | 2.00 | |
| " | 8½ months' interest upon 25.00..... | 1.79 | |
| " | 7½ " " " " | 1.57 | |
| " | 6½ " " " " | 1.36 | |
| " | 5½ " " " " | 1.15 | |
| " | 4½ " " " " | .94 | |
| " | 3½ " " " " | .75 | |
| " | 2½ " " " " | .52 | |
| " | 1½ " " " " | .32 | |
| " | ½ " " " " | .10 | |

| | | | |
|-------|-----|---|--------|
| 1891. | | | |
| Nov. | 27. | Paid draft to the S. C. P. Q..... | 25.00 |
| 1892. | | | |
| Feb. | 14. | Int. 3 months..... | .60 |
| " | 13. | Paid premium insurance..... | 42.02 |
| 1891. | | | |
| Mar. | 1. | Balance due under loan of H. A. Tremblay of 27 of May, 1890..... | 39.35 |
| 1892. | | | |
| Feb. | 14. | 11½ months' interest at 10% upon 39.35.... | 3.78 |
| | | Balance due | 719.49 |

E. & O. E.

| | | |
|--------------|--|----------|
| 284 | Interest on \$829.89 at 6% for 10 1-2 yrs.... | 522.61 |
| | | 1,352.50 |
| | Premiums on life insurance and interest on same | 1,002.88 |
| | | 2,355.58 |
| June 9, '91. | Loaned to H. A. Tremblay \$20, int. 11.40.. | 31.40 |
| | | 2,386.78 |
| | No. of Policy 149,296. | |

DEF'T EX. G.

LEWISTON, ME., Feb. 28. 1901.

J. L. English, Esq., Secretary.

DEAR SIR: Yours of the 23rd inst. re-policy No. 149,296, duly received. Desiring to submit my ideas in regard to this matter, I wish to call your attention to the fact that the assignment written in French and made in my favor by my father and mother jointly on January 14 last, reads that all their rights and interest in *paid* policy, after the divers sums legitimately due to Mr. Cloutier and the payment of which is secured by contracts made before a Notary Public, will have been paid are transferred to me, my assigns, or representatives. So in regard to your remark, that you may be legally obliged to pay out to Mr. Cloutier what my mother has requested you to pay him, I wish to beg from you to consider my opinion, which is, that, she having assigned to me her rights in said policy in January, she has no more power over the matter, except to show what was due by my father at the time as shown by contracts made before a Notary and a request from her, does not seem to be any evidence

285 "sufficient" to show what was due then and does not deprive
my of my rights and specially of that to require from Mr. Cloutier to show what his rights are in furnishing you with proper accounts and documents to support the same before he be entitled to

any payment of what is really due to him, and before to come to any agreement with him in regard to this matter, I want to see such documents as he may have, for I have already paid out about \$500.00 as a part consideration of what I have agreed to pay for the rights above mentioned and I have agreed to pay more, as my father told me that there was a larger balance remaining due on said policy and which might now to come in my possession.

Being understood that Mr. Cloutier's rights are to be shown by proper documents and he having said and recognized by his account presented to you, that *their* is but one in force made before a notary it being one made in 1889 for the sum of \$541.00, and I having shown to you that the Quebec Per. Building Society has paid him the sum of \$405.00 on account on same for my father, you know now that *their* is but a balance of \$136.00 and interest on same being \$81.60 due to Mr. Cloutier besides \$935.61 due him for premiums paid on said policy as the enclosed statement shows, "interest included."

These two items amounting in all to \$1153.21, which amount I am willing to recognize as due and to agree to let him receive. But I now desire to let you know that I have decided not to accept but honest and fair accounts from him and that I will have recourse to law within a few days if he continues to refuse to present a claim sustained by documents necessary to prove his rights.

In hope that you will oblige me in taking this letter into consideration, I remain,

Respectfully Yours,

P. F. TREMBLAY.

286

DEPT EX. H.

HARTFORD, CONN., *March 9th, 1901.*

P. F. Tremblay, Esq., Attorney-at-Law, No. 256 Lisbon St., Lewiston, Me.:

(Thro' T. H. Christmas, Mgr.)

DEAR SIR: We are today in receipt of a letter from Mr. Cloutier, concerning claim under policy No. 149,296. He states that his claim on this policy has no connection with any transaction previous to 1889; that under date of April 16th, 1889, Mrs. Tremblay, acting as attorney for her husband, borrowed from him the sum of \$541, to be remitted by monthly installments of \$25.00 each, and gave this policy as security. On account of the insured losing his position, Mr. Cloutier says he never got a cent on this loan, and that during 10 years he has regularly paid to the Company the premiums on this policy, which premiums, with interest, amount to \$1073.36, and that the loan of \$541, with interest, amounts to \$968.84; the two amounts making a total of over \$2042.00, which he states is his claim, and is just, reliable and undeniable, though he has agreed to accept the amount mentioned in our previous letter. What have you to say?

Yours truly,

J. L. ENGLISH, Sec.
BIDWELL.

DEF'T EX. I.

HARTFORD, CONN., *March 16th, 1901.*

P. F. Tremblay, Esq., No. 256 Lisbon St., Lewiston, Me. (thru' T. H. Christmas, Manager).

DEAR SIR: Your letter of the 12th through Mr. Christmas, concerning claim under policy No. 149,296, Tremblay, has been
 287 forwarded us for reply. We note what you say in regard to bringing suit against Mr. Cloutier, but we would like to write Mr. Cloutier today in regard to same, and see if he has anything further to say. In the meantime will you kindly give us the name of the Court in which you will bring suit against Mr. Cloutier. As soon as we hear from him we will advise you.

Yours truly,

J. L. ENGLISH, *Sec.*
 BIDWELL.

DEF'T EX. J.

Ætna Life Insurance Co., Hartford, Conn.

GENTLEMEN: Mr. P. F. Tremblay has asked us to take up with you the matter of his claim against the Ætna upon the insurance policy No. 149,296, upon the life of his father, Mr. J. O. Tremblay.

There is evidently a sharp disagreement between Mr. Tremblay and Mr. Cloutier, the other claimant under the policy, and Mr. Tremblay does not accept at all Mr. Cloutier's assertion which you quote in your letter, that "he can produce legal proof" for his various claims, and that therefore he has a right to the sum of \$1614.

From examination of the papers, it does not appear to us that Mrs. Tremblay had any authority whatever to consent to your paying him that sum of money, or that her consent would have any effect upon the rights of the parties.

Mr. P. F. Tremblay calls our attention to evidence which seems conclusive, showing that in various respects the claim of Mr. Cloutier is wrong.

We assume that the company stands indifferent in the matter, and is willing to pay the amount due under the policy to the
 288 person to whom it rightfully belongs; or if it belongs to two different persons, to such persons in their due proportion. But under the circumstances, it must be evident to you that Mr. Tremblay cannot properly consent to any such payment as you suggest in your letter of March 26th.

Mr. Tremblay is without a copy of the policy, the original, as he understands, being in your possession. Will you kindly forward us a copy of the policy, in accordance with request which we understand Mr. Tremblay himself made a short time ago.

We note your inquiry in letter of March 16th as to the court in which suit will be brought, if suit should become necessary. As to this, we are unable to inform you until we know further as to the

details of the policy. As Mrs. Tremblay is in Canada, and more or less of the evidence, in case of a contest, may have to be obtained in that vicinity, it may be desirable to commence proceedings there. We suppose that, in any event, the company, in case of suit, would interplead, and that so far as the company is concerned, it might not make much difference where suit should be brought.

Hoping we may receive an early reply, we are

Very truly yours,

OAKES, PULSIFER AND LUDDEN,
Per H. W. O.

DEF'T EX. K.

HARTFORD, CONN., *April 6th, 1901.*

Messrs. Oakes, Pulsifer & Ludden, Attorneys-at-Law, No. 81 Main St. Auburn, Me. (thro' T. H. Christmas, Manager).

GENTLEMEN: In reply to your letter of the 2d would say that policy No. 149,296, issued on the life of Jean O. Tremblay is not in our possession, but our records show that it was issued 289 Aug. 13th, 1885, in the sum of \$2,000, and written for the benefit of his "wife, Arthemise D. Tremblay, or in event of her death before his to his executors, administrators or assigns." We regret that the claimants have been unable to arrive at an amicable settlement, and would say that we have made a judicial deposit of the amount due under this policy: namely, \$1959.49, which is the amount of the policy, less the semi-annual payment of \$40.51. This amount of \$40.51 is the amount of the semi-annual premium after deducting the dividend of \$9.97. Such deposit was made in the Canadian Court, and it will now be necessary that Mr. Cloutier and your client, Mr. Tremblay, assert their rights in such court.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

DEF'T EX. L.

Ætna Life Insurance Co., Hartford, Conn.

GENTLEMEN: Replying to your favor of the 6th inst. in regard to claim upon policy No. 149,296, of J. O. Tremblay, we note you say that the policy is not in your possession. Will you kindly inform us where the policy now is. We understood it had been deposited with you. Will you also inform us whether there is any stipulation in the policy by reason of which any time must elapse before a suit can be brought upon the same.

Yours truly,

OAKES, PULSIFER AND LUDDEN.

DEF'T EX. M.

HARTFORD, CONN., *April 13th*, 1901.

Messrs. Oakes, Pulsifer & Ludden, Att'ys, Auburn, Me.

GENTLEMEN: In reply to your favor of the 12th concerning claim under policy No. 149,296, Tremblay, would say that the policy is not in our possession. We presume that Mr. Cloutier holds it. There is no stipulation in the policy which provides that suit cannot be brought within a certain time. We presume you have received official notice of the deposit of the amount of this policy in the Canadian Court.

Yours truly,

J. L. ENGLISH, *Sec.*
BIDWELL.

DEF'T EX. N.

Registrar's Office for the County of Chicoutimi.

I the undersigned hereby certify that the following document is a true copy of the entry made at fifteen minutes after eleven in the forenoon, the sixth day of May One thousand eight hundred and ninety-two, in the year of our Lord; Record (A) Book (13) page (411) and under number eight thousand seven hundred and eleven (No. 8711) To-wit:

In the year One thousand eight hundred and ninety-two, the fourth day of May, before Thomas M. W. Pampalon Notary Public for the Province of Quebec, residing in the City of Quebec, subscribed.

Was present Jean Baptiste Cloutier Esquire, of said City of Quebec and formerly professor of Laval Normal School of said Quebec.

The said Cloutier does sell with warranty against all troubles debt and mortgages whatever, to William Boily of the City of Chicoutimi, merchant and farmer who was present at the time of execution of this instrument and accepted the conditions and conditions thereof

A parcel of land being the north-eastern part of lot numbered sixty-one (61) of the register of land for the eastern part of the city of Chicoutimi, situated northerly to the second front street containing about two and one third ($2\frac{1}{3}$) acres in surface, with the house thereon located together with its appurtenances and dependencies without any guaranty of measure precise the same as it actually stand.

The same as the whole is actually, circumstances and dependencies, with the servitudes actives and passives, without exceptions in reserve.

The herein described property belongs to the said grantor having bought the same from the Société de construction Permanente of Quebec in virtue of a contract (notarial act) made before the undersigned Notary and dated at Quebec on the ninth day of November

last (1891) recorded at Chicoutimi the 11th of same month and of same year under number (8597).

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said grantee his heirs, to their use and behoof forever.

This conveyance is made subject to all taxes for schools municipality or otherwise and arrears on same if there are any, said grantee accepting to settle all claims that may be made against the premises.

This conveyance is made for and in consideration of the sum of twelve hundred dollars, on which sum said grantor acknowledge to have received, at the time of the execution of this instrument, the sum of five hundred dollars, the grantee agrees to pay the balance of seven hundred dollars as follows, to wit: two hundred dollars the fourth day of May next (1891); two hundred dollars the fourth day of May 1894; two hundred dollars on the fourth day of May 1895; and one hundred dollars on the fourth day of May 1896, the whole with interest at six per cent., the interest decreasing in proportion to the accounts paid.

The grantee agrees to keep the insurance in force which is
292 actually on said property and to transfer the same, policy receipts of payments on premiums and to the grantor, and this until the said grantor will have been fully paid.

As security for the payment of said sum of seven hundred dollars the grantee has mortgaged the said property herebefore described on which the grantor keeps or retains all the rights and advantages or privileges as a mortgage of real estate.

And for the execution of this instrument the contracting parties declare that their residence is at their home respectively.

Made and executed at Quebec before Notary Pampalon the day and month before mentioned and recorded under number nine hundred and fifty eight.

In witness whereof after lecture and all of the parties to this instrument being present, have all signed.

(Signed)

WILLIAM BOILY.

J. B. CLOUTIER.

THOM. M. W. PAMPALON, N. P.

True copy (one reference good).

(Signed)

THOM. M. W. PAMPALON, N. P.

I hereby certify this all which I attest as being true and in conformity with the document transcribed.

Given at Chicoutimi this eleventh day of April One thousand nine hundred and four, one reference good and one word ruled and null.

THOS. BOSSÉ, Registrar.

The mortgage created by this contract is discharged in virtue of an acquittance of the Society of permanente construction of Quebec,

that is to the vendor's right in virtue of the subrogatory
293 acquittance herebefore mentioned for \$358.38-00 being the balance reverting to the vendor of the price of sale mentioned to the present contract of sale.

Said acquittance has been made and passed this eleventh day of April 1899, before Notary L. P. Sirois and deposited the Seventeenth of the same month of record at this office under number 10009 Vol. 14 and 8711 Vol. 13 and 11446 Vol. 16.

THOS. BOSSÉ, *Registrar.*

A true copy.

Attest:

JOHN L. READE, *Clerk.*

294

In Equity.

ÆTNA LIFE INSURANCE COMPANY

vs.

PATRICK F. TREMBLAY and ARTHEMISE D. TREMBLAY.

Opinion, September 17, 1906 (101 Maine, 585).

ANDROSCOGGIN:

Sitting: Wiswell, C. J., Emery, Whitehouse, Strout, Savage, Powers, JJ.

EMERY, J.:

The material facts are these: The plaintiff company, through its Canadian branch, issued a policy of life insurance for \$2,000 to Jean O. Tremblay, then of Quebec Province, payable to his wife Arthemise or, in the event of her prior death, to his own representatives. In 1891 Tremblay, with his wife's consent, assigned the policy to Mr. Cloutier of Quebec, as security for advances made and to be made by Cloutier for Tremblay. The policy was delivered to Cloutier with the assignment and retained by him until after Tremblay's death at Quebec January 24, 1901, during which time, Cloutier, at the request of Tremblay and wife, paid the annual premiums on the policy. A few days previous to his death Tremblay and his wife had assigned all their interest in the policy to their son, Patrick F. Tremblay, of Lewiston, Maine, (one of the defendants in this suit) subject to Cloutier's rights under his prior assignment. Upon the death of the insured, Mr. Cloutier and Mr. Patrick F. Tremblay each claimed the whole insurance money, Patrick insisting that little, if anything, was due Cloutier under the assignment to him. The Company thereupon, on April 9, 1901, paid into the Provincial Treasury of Quebec, under a law of that Province, the amount due on the policy, \$1959.49. On the 22nd of the same April Cloutier began proceedings in the Superior Court of Quebec to establish his claim to the insurance money thus deposited, and, on June 8 following, obtained a judgment for the whole amount. The Provincial Treasurer thereupon paid over the entire sum to Cloutier June 25th, 1901.

Patrick F. Tremblay, however, on May 22, 1901, began in the Supreme Judicial Court of this State for Androscoggin County an

action at law against the insurance company to recover the amount of the insurance policy under the assignment to him. This action came on for trial at the January term, 1902, when it was reported to the Law Court upon the evidence without any stipulation as to pleadings, that court to render such judgment as the rights of the parties required. The Law Court, in June, 1903, rendered judgment against the Company for the full amount of the policy \$1959.49, and interest (see 97 Maine, 547). The Company thereupon procured from Cloutier a formal assignment of his claim upon the insurance money, and then brought this bill in equity against Patrick F. Tremblay, the plaintiff in that action at law, for the ascertainment of the amount due Cloutier out of the fund and for the deduction of that amount from the judgment.

Patrick F. Tremblay, the plaintiff in that action and the defendant in this suit, contends that all the facts necessary to sustain this bill were available to the company in defense of the action at law, and hence that the rights of the parties on those facts were adjudicated in that action and cannot be litigated again in this suit.

If the material facts now alleged were matters of defense to the action at law and could have been interposed in defense in that action, this bill cannot be sustained. It is common learning that the judgment in an action at law *in* conclusive as to defenses actually made and also as to defenses which might have been made but were not. In *Milliken v. Dockray*, 80 Maine, 82, it was expressly decided that "a defense which may be interposed in an action at law cannot be invoked as a cause for relief in equity." The only question, therefore, upon this contention of the plaintiff, is whether the ma-

terial facts now brought forward show any right in the
296 insurance Company against Patrick F. Tremblay or the insurance money which was not a matter of defense to his action or could not have been interposed in defense to that action.

The evidence does not disclose any new right in the company arising since the judgment or even since the trial of the action at law. True, the formal assignment by Mr. Cloutier to the company of all his claim upon the insurance money was made after that judgment, but that assignment did not create any new right in the company. The right of the company to enforce for its own benefit the claim of Cloutier upon the insurance money (if valid) came into being as early as June 25, 1901, when the treasurer of Quebec paid the insurance money to Cloutier in pursuance of the order of the Quebec court, and long before the trial of the action at law in this state. The company then became subrogated to the right of Cloutier to any part of the insurance money, and could then interpose that right against any claim or action by Patrick F. Tremblay or any one else for that money. The latter formal assignment from Cloutier added nothing to that right of the company.

It should be borne in mind here that this equity suit is to have the claim of Cloutier upon the insurance money adjudicated and the amount thus adjudicated deducted from the judgment against the company in the action at law. The question, therefore, is narrowed to this: Was the claim of the company thus acquired from Cloutier

by subrogation a matter of defense to the action at law, and could it have been interposed in defense in that action?

The Cloutier claim was clearly a matter of defense. It was not a separate, independent claim against Patrick F. Tremblay which the company could file in set off in Tremblay's action, or bring a separate action upon it as it might elect. The claim was only upon the insurance money, and, as against Tremblay, could only be used to reduce his claim upon that money. It could not be enforced against Tremblay personally.

It is also clear, we think, that the Cloutier claim could have been effectually interposed in defense of the action at law. Whatever might have been the difficulty, if any, at common law, we see
 297 none under our statute. By R. S. ch. 84, sec. 17, "any defendant may plead in defense to any action at law in the Supreme Judicial Court any matter which would be ground of relief in equity and shall receive such relief as he would be entitled to receive in equity against the claims of the plaintiff." This language is clearly broad enough to include the Cloutier claim. Nor was there any difficulty in pleading the matter, for under the same statute it could have been "pleaded in the form of a brief statement under the general issue." See *Miller v. Packing Co.*, 88 Maine, 605. Further, the action at law was reported upon the evidence without any limitation of the court to the pleadings, and hence the Law Court could have given effect to any matter of defense disclosed by the evidence even if not pleaded.

It is suggested that the desired relief was not the company's right in the action at law, but was rather a matter of grace; that to have obtained the relief would have required a transformation of the action at law into a suit in equity as provided by statute, and that the court had the power to refuse to order such a transformation. No such transformation was necessary. There was no difficulty in affording the desired relief in the action at law. The question of the validity and amount of the Cloutier claim could have been determined in that action, with or without the assistance of an auditor or jury, as fully and accurately, as in an equity suit. It was the right of the company to have that question determined in that action.

The company urges that the relief now asked for is solely of an equitable nature and has long been recognized as peculiarly for equity courts to grant through equity suits, and it invokes the doctrine that the power and duty of the court to afford relief by decrees in equity are not affected by legislation enabling the court to afford such relief in actions at law. True, the statute does not in the least abridge or limit the equity powers of the court, but it does provide how and when those powers may be exercised. It commands the
 298 court to afford equitable relief to a defendant when asked for in an action at law as a defense to that action, if, as in this case, the relief can be thus afforded. The statute makes the grounds for such relief available as matters of right in defense in an action at law. It thus became the duty of the defendant in such action to present in that action all the defenses he can and desires to make, whether legal or equitable in their nature. It follows that

a defendant cannot now withhold an available defense even though equitable in its nature, in the trial of an action at law, and after judgment against him bring forward that defense in a new suit, and require the court to give it effect by amending or modifying its former judgment. We think one purpose of the statute was not only to remove the necessity of, but to prevent, such procedure.

If, as is suggested, the Cloutier claim was before the court in the action at law, but was not considered, or, if considered, was erroneously disallowed, or if for any reason justice was not done in the action at law through accident, mistake or misfortune, and a further hearing would be just and equitable, the company's remedy is by a petition for a review of that action, not by a new original suit alleging matters that were or could have been interposed in defense of the first suit.

Bill dismissed with one bill of costs for defendants.

299 [Endorsed:] Ætna Life Insurance Co., in Equity, vs. Patrick F. Tremblay and Arthemise D. Tremblay. Opinion.

300 ÆTNA LIFE INSURANCE COMPANY, Petitioner for Review,
vs.
PATRICK F. TREMBLAY.

Ralph W. Crockett, Attorney for Plaintiff.
Oakes, Pulsifer & Ludden, Attorneys for Defendant.

301 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court, January Term, 1907.

ÆTNA LIFE INSURANCE CO., Pet. for Rev.,
vs.
PATRICK F. TREMBLAY.

Law on Defendant's Exceptions.

Ralph W. Crockett for Plaintiff.
Oakes, Pulsifer & Ludden for Defendant.

Date of Petition, December 1st, A. D., 1906.

STATE OF MAINE,
Androscoggin, ss:

To the Honorable Justice of the Supreme Judicial Court Next to be Held at Auburn, Within and for the County of Androscoggin, on the Third Tuesday of January, A. D. 1907:

Respectfully represents The Ætna Life Insurance Company, a corporation located at Hartford in the State of Connecticut, that Patrick F. Tremblay, of Lewiston, in said County of Androscoggin,

302 on the twenty second day of May, A. D. 1901, sued out of said Court a writ of attachment against your petitioner, returnable to the term of said Court held at said Auburn on the third Tuesday of September A. D. 1901, when and where said action was duly entered. The declaration contained in said writ was as follows:—

“In A Plea of Debt, for that, on the thirteenth day of August, A. D. 1885, at Quebec, in the Province of Quebec, to wit, at said Auburn, the said defendant, by its obligation in writing, to wit, its policy of insurance of that date, numbered 149,296, in consideration of certain payments then made and thereafter to be made by one Jean O. Tremblay, and of certain conditions therein set forth, did insure the life of the said Jean O. Tremblay, and did promise and agree that it would pay unto one Arthemise D. Tremblay, the wife of *of* said Jean O. Tremblay, her executors, administrators or assigns the sum of two thousand dollars upon the death of the said Jean O. Tremblay, and thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, by two assignments in writing by them signed, copies of which are filed in Court, with this writ, the said Jean O. Tremblay and Arthemise D. Tremblay, for valuable consideration to them then and there paid, did sell, assign and transfer unto the plaintiff all their right, title and interest in and to said policy of life insurance numbered 149,296 as aforesaid, and all benefit and advantage to be derived therefrom to the extent of such interest as they might have when said policy should become a claim.

And the plaintiff avers that due notice of said assignments was thereupon duly sent to said defendant, and by it received, accepted and approved.

And the plaintiff avers that the said Jean O. Tremblay died on the twenty-first day of January, A. D. 1901, that thereupon within one year from the day of said death, due and sufficient proof thereof, as required by said contract of insurance, was forwarded to said
303 defendant; and that any further or other proof of the death of said Jean O. Tremblay was then and there waived by said defendant.

Whereby and by reason of the premises, an action hath accrued to the plaintiff to demand and have of the said defendant the said sum of two thousand dollars; yet the said defendant, though often requested, has not paid said sum, but neglects and refuses to do so.

Also, for that the said defendant, at said Auburn, on the day of the purchase of this writ, was indebted to the plaintiff in the sum of three thousand dollars, for goods then bargained and sold by the plaintiff to the said defendant, at its request; and for work then done and materials furnished by the plaintiff for the said defendant, at its request; and for money then loaned by the plaintiff to the said defendant, at its request; and for money then paid by the plaintiff for the use of the said defendant, at its request; and for money then received by the said defendant for the use of the plaintiff at its request; and for money found to be due from the said defendant to the plaintiff upon an account then stated between them.

Whereby an action hath accrued to the plaintiff to demand and

recover of the said defendant said sum; yet though requested, the said defendant had never paid the same, but wholly neglects so to do.

Under this count the plaintiff will claim to prove that said defendant, on the thirteenth day of August, A. D. 1885, issued its policy of insurances to one Jean O. Tremblay, upon the life of the said Jean O. Tremblay, for the sum of two thousand dollars, payable upon the death of the said Jean O. Tremblay to Arthemise D. Tremblay, the wife of the said Jean O. Tremblay, which said policy was thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, assigned in writing by said Jean O. Tremblay and Arthemise

304 D. Tremblay to the plaintiff, for valuable consideration, copies of which assignments are filed in court with this writ; and that thereafterwards, to wit, on the twenty-first day of January, A. D. 1901, said Jean O. Tremblay died, while said policy was in full force; and that said defendant received due notice of said assignment, and of the death of said insured, and waived any further or other notice thereof.

To the damage of the plaintiff (as he says), the sum of four thousand dollars."

Said action was continued to the term of said Court held at said Auburn on the third Tuesday of January A. D. 1902, when it was reported to the Law Court with the following stipulation:—

"By agreement of parties, this case is reported to the law court upon so much of the foregoing evidence as is competent and legally admissible. If the law court is of opinion that the action is maintainable, it shall render such judgment as the rights of the parties require.

A. R. SAVAGE,
Justice Presiding."

Your petitioner pleaded the general issue and at the conclusion of the evidence for the defence the following agreement was made a part of the record:—

"It is further agreed that any and all of the above evidence, if admissible at all, may for the purpose of this case, be deemed admissible under the general issue."

The testimony in the case as reported tended to show the following facts:—

In 1885 the Ætna Life Insurance Company of Hartford, Conn., insured Jean O. Tremblay, of the Province of Quebec, for \$2000, the policy being made payable at his death to his wife, Arthemise D. Tremblay, or in the event of her death before his, to his estate. In November, 1891, he assigned the policy to Jean B. Cloutier, of Quebec, as collateral. The policy was delivered to Cloutier at 305 that time and it remained in his hands until Mr. Tremblay's death. Two years before this Mrs. Tremblay, the beneficiary, acting under a power of attorney from her husband had borrowed from Cloutier \$541, and had agreed to assign the policy to him as soon as a prior assignee should release its claim.

At the request of Mr. and Mrs. Tremblay, Cloutier paid the premiums on the policy from February 1891 until Mr. Tremblay's

death, paying in all \$774.67. The amount due Cloutier was increased from time to time by other payments and loans. On January 14, 1901, Mr. and Mrs. Tremblay assigned the policy to their son, Patrick F. Tremblay of Lewiston, this latter assignment being in express terms "subject to J. B. Cloutier's claim." Another assignment, different in form but similar in effect, was made to Patrick at the same time. The first of these assignments he forwarded to the Company which acknowledged its receipt. Mr. Tremblay, Sr., died a week later. At his death there was due on the policy \$1959.49. Proofs of death were filed accompanied by the affidavits of Cloutier and P. F. Tremblay, as assignees, and Mrs. Tremblay as beneficiary. Cloutier claimed the entire amount due on the policy, his account aggregating \$2560.85. P. F. Tremblay claimed "all but what is excepted by assignment, being between \$500 and \$1000." Mrs. Tremblay stated that the policy "was assigned to Jean Baptiste Cloutier of Quebec, on the 24th day of November, 1891, and said assignment is still in force. A further assignment, was made in favor of P. F. Tremblay, Att'y at Law of Lewiston, Maine, January 14, 1901."

After Mr. Tremblay's death Cloutier and Patrick were unable to agree on the amount of the former's claim and the Company therefore, deposited the money with the Treasury Department of Quebec under what is known as the Judicial Deposit Act. In April 1901

Cloutier commenced proceedings in the Superior Court of 306 Quebec to obtain the money and in June was awarded Judgment for the entire amount of the deposit, \$1959.49, which was shortly afterwards paid over to him by the Provincial Treasurer.

In the case as reported there was evidence tending to show the amount of the claim of said J. B. Cloutier to the insurance money under his said assignment. A part of this evidence was the deposition of Mr. Cloutier himself, showing the amount of his claim to be as follows,—computing interest to April 23rd, 1901, the date of the writ in the proceedings brought by Cloutier in the Superior Court of Quebec to obtain the amount deposited by your petitioner:—

| | |
|---------------------------------------|-------------------|
| Amount of claim without interest..... | \$1,571.56 |
| Interest | 798.47 |
| Total | <u>\$2,370.03</u> |

Your petitioner further says that in the brief submitted by its attorney to the law court the question of the amount of the said Cloutier claim was fully argued as appears on pages 14 to 18 inclusive, of said brief, and your petitioner further says that counsel for said Patrick F. Tremblay in their brief submitted to the law court, fully argued said question as appears on pages 11 to 15 inclusive, of said brief.

Your petitioner further says that on June 26th, 1903, the law court handed down an opinion in said action, ordering judgment for the plaintiff, Patrick F. Tremblay, for \$1959.49, being the full amount due under the policy, together with costs, and interest from April 21st, 1901, ninety days after the death of the insured, which

opinion appears in Patrick F. Tremblay vs. Ætna Life Insurance Company, 97 Maine, 547.

Your petitioner further says that in its said decision and opinion said law court omitted to consider and determine the amount of the said Cloutier claim.

Your petitioner further says that it contended in the said
307 brief submitted by its attorney to the law court that the plaintiff could not recover because,

The suit was brought in the name of the assignee, the assignment not having been assented to by the insurance company, and further because,

The matter was res judicata, and the plaintiff was bound by the record in the Canadian suit.

The law court in its said opinion held that neither of said objections could prevail.

Your petitioner further says that said opinion contains the following language:

"The plaintiff in the present case is not bound by the proceedings in Quebec. No legal service of the writ was made upon him. He was a resident of a foreign country, and the plaintiff knew his residence and alleged it in his writ to be in Lewiston, Maine, U. S. A. Service of the writ was by publication. The writ, declaration, summons, publication, default and judgment were against the heirs of Jeon O. Tremblay, defendants, giving no name or names. Such a writ and such a service would not give our courts jurisdiction upon which a valid judgment could be rendered in personam."

And your petitioner further says that it expects to prove by the testimony of Norman W. Trenholme, of Westmount, Montreal, Judge of the Superior Court of the Province of Quebec, in the nature of new evidence, that the law of the Province of Quebec relative to the naming of defendants in a suit against an intestate estate, is as follows:

"If the suit is brought within six months of the death of the intestate the defendants may be named and designated in the writ generally as the heirs of so and so, without more particularly describing them, and suit against the heirs of J. O. Tremblay in which the defendants were described simply as heirs of J. O. Tremblay
308 would be perfectly legal when instituted within six months after his death. The object of this law is that persons having claims against the deceased may not be exposed to lose their rights against a large number of possible absent heirs whose existence or whereabouts may be unknown, and whom it is impossible to individually describe. After the six months, in suits against heirs the defendants must be individually described in the writ, with their residence."

Your petitioner further says that said opinion contains the following language:

"Nor would the proceedings upon their face furnish a basis for a judgment in rem, even if we assume that the statutes of the Province, or the *lex rei sitæ*, are the same as our own. By our statutes a judgment in rem can be entered only against the property of the

debtor, certain liens excepted. Pluredé V. Le Vasseur, 89 Maine 172. P. F. Tremblay was not the debtor; therefore, no valid judgment in rem could be entered against the insurance money, in the hands of the Provincial Treasurer of which he held a legal title. The Quebec Court therefore had no jurisdiction over the plaintiff Tremblay in personam or in rem, and could not render a binding judgment. The Revised Statutes of the Province of Quebec applying to this case and made a part of the exhibits are as follows:—

“Art. 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay in the office of the Provincial Treasurer.” “Art. 1199. In the case mentioned in the preceding article, the treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into court as a tender, to withdraw his deposit, before the same shall have been demanded by the claimant.”

309 There is no evidence in this case that the receipt was registered, or that the money had been paid into court as a tender. The company, therefore, had full power and ample opportunity, being a party to the proceedings, even after the judgment was rendered, to fully protect himself against any doubt of the legality of the Quebec proceedings by withdrawing its deposit from the treasury. Although having a full knowledge of all the transactions of Cloutier and P. F. Tremblay with respect to their claimed assignments, and of the conditions imposed by themselves in order to make an assignment valid, together with a presumed knowledge of the law, yet they stood by and allowed the proceedings of Cloutier to be consummated without the slightest intervention. It would not be a great strain upon the imagination under the circumstances in this case, to read between the lines of these proceedings the subtle goodwill of the company contributing to the result attained. They can neither legally nor morally complain of the fall of the Quebec judgment.”

And your petitioner further says that it expects to prove by the testimony of said Norman W. Trenholme, in the nature of new evidence, that the law of the Province of Quebec, relative to the registering of said deposit receipt, the payment of said money into court as a tender, and the withdrawal of said deposit, is as follows:

“As to the withdrawal of the money from the Provincial Treasurer, had the Company done so it would have been an act of bad faith and it would have deprived it of the whole benefit of the deposit. Such an act would never have been thought of after making the deposit. Further, I question if the Treasurer of the Province would have allowed the Company to withdraw the money. It is a thing that the Company has never done, and would not be justified in doing after making a deposit and giving notice to the parties, as in this case. Article 1199 of our Revised Statutes which refers to the withdrawal of a deposit, could not apply to a case of this

310 kind. The deposit receipt spoken of therein is one capable of registration and we have no registration of receipts in this

Province unless they relate to real estate, so there could not possibly be any registered deposit receipt in this case. I would confine the provision of Article 1199 to the deposit of sums in payment and discharge of a mortgage or other registered claims against real estate. Article 1200 of the Revised Statutes indicates the cases in which registered Deposit Receipts may exist, and it is only in such cases that a registered Deposit Receipt is possible, and the object of registering the deposit receipt is that it may operate as a cancellation of a mortgage or registered claim against real estate. Article 1199 is as follows:

"In the case mentioned in the preceding article the Treasurer shall pay over the amount deposited to the claimant who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into Court as a tender to withdraw his deposit before the same shall have been demanded by the claimant."

Article 1200 is as follows:

"In any case in which a voluntary deposit is made under this section of any amount due in virtue of any registered claim, the depositor shall cause a duplicate of the deposit receipt to be registered and left with the Registrar, and an entry thereof shall be made in the margin of the register opposite the title under which the claim exists, and such registration and entry shall have the same effect as regards the cancelling of the registration of the claim, as the registration and entry of a discharge from the creditor for a like amount would have had."

These articles were then and now in force. Since this case arose there has been no change in the law applicable to it, and indeed no change for years before."

And your petitioner further says that it expects to prove 311 by the testimony of said Norman W. Trenholme, in the nature of new evidence that in said proceedings in Quebec it acted in perfect good faith; that the said Norman W. Trenholme is expected to testify in relation thereto as follows:

"I was counsel for the Ætina Life Insurance Company in certain litigation arising out of said policy issued on the life of Jean O. Tremblay.

Most assuredly both the Company and myself acted in perfect good faith in making the Deposit as we had done in many cases previously, and in fact always, for years before, where there were conflicting claimants. We had no interest or concern whatever in the conflicting claimants and it was a matter of perfect indifference to us who received the money as after the deposit and notice to them, the parties were bound to settle the matter between themselves, by litigation or otherwise, and without the intervention of the Company. The Company had nothing to do with allowing Cloutier to be paid the money and had no right to interfere whatever, but he was paid it in consequence of a judgment of the Court in his favor, by the Treasurer of the Province with whom the money was de-

posited at Quebec, and who was, by law, bound to obey the Judgment.

My belief at the time was, and is,—and the fact is undoubted—that by our law the Deposit was a perfect protection to the Company. It has always been so held by our Courts. The object of the Company in making the deposit was to avoid litigation. It was anxious to pay, but did not know whom to pay the amount due. The object and policy of our law are to relieve the debtor from the trouble and expense of litigation by allowing him to make a Judicial deposit, which operates as a payment by and release to him of the debt. We had nothing to do with Cloutier or any other party, and

312 had nothing to do with allowing Cloutier or any one else to receive the money.

The Company had nothing to do with Cloutier obtaining his judgment, nor with the payment of the money to him. After making the deposit, of which due notice was given to Tremblay as well as to the other claimant Cloutier, it was Tremblay's duty to contest Cloutier's action and prevent Cloutier if he could, from getting a judgment for the money, and if there was any neglect it was on the part of Tremblay in not contesting Cloutier's action. Had he come into the case and shown that he had a better title than Cloutier the judgment would have awarded him the money. The Company had nothing to do with allowing any judgment and it could not have interfered. The very object of the Deposit was that the company might not be involved in any litigation, but stand completely aside and let the contesting claimants fight it out as they saw fit."

And your petitioner further says that it expects to prove by the testimony of Amedee Robitaille, of said Quebec, Advocate and King's Counsel, in the nature of new evidence that the law of the Province of Quebec, is such that the deposit having been made in the Treasurer's Department, it could not be withdrawn by said Company, and that what was done as regards said deposit by said Company is what is done in all cases when moneys are in dispute, that is to say, deposited in the Treasurer's Department and the party winning producing the judgment rendered in his favor by the court is paid the amount deposited. Said Robitaille had no notice during the pendency of the Canadian suit of any lawsuit undertaken by said Patrick F. Tremblay against your petitioner.

And your petitioner further says that it expects to prove by the testimony of said Amedee Robitaille, in the nature of new evidence, that in said proceedings in Quebec it acted in perfect good faith; that said Amedee Robitaille is expected to testify in relation thereto as follows:

313 "I was counsel for Jean B. Cloutier of Quebec in certain litigations arising out of said policy issued on the life of Jean O. Tremblay. Said deposit was to my knowledge made in good faith. I affirm most emphatically that neither directly nor indirectly, I had any communication whatever with the *Ætna Life Insurance Company* for any co-operation.

Our action has been taken on the instructions of my client and I had no communication whatever with the *Ætna Life Insurance*

Company or any of *his* officers or advisers in order to facilitate our client obtaining judgment and being paid of the judgment rendered in his favor. The case of my client Cloutier against Tremblay went to the Court as ordinary cases. We produce and put in the record evidence legally required to have judgment in favour of our client and nothing at all having the shadow of illegal or irregular means has been done to advance or protect the interests of our client. There has been no collusion as I have stated above between my client, myself and the Ætna Life Insurance Company.

The Ætna Life Insurance Company in the case of Cloutier against Tremblay had nothing more to do than make the deposit as it has done. We have in our Code of Procedure nothing of the nature of an interpleader. The only plea which might have been filed against the action or claim of Mr. Cloutier would have been a contestation of his claim against the defendant Tremblay, what has not been done by the defendant himself and I don't see how the Ætna Life Insurance Company could contest a claim of our client supported as it has been on promissory notes, transfers, and vouchers, and supporting our client's claim."

And your petitioner further says that it expects to prove by the testimony of Camille Guay, of said Quebec, in the nature of new evidence, that in said proceedings in Quebec it acted in perfect good faith; that said Camille Guay is expected to testify in relation thereto as follows:

314 "I was agent for the Ætna Life Insurance Company at the time of said proceedings. Jean O. Tremblay, the insured under said policy No. 149296, died on the 21st day of January 1901; the proofs of his death were filed to the Ætna Life Insurance Company on the 28th of the same month, and the 90 days allowed to said Company by its policy to pay the amount due under same were to expire soon, when at that late date, Patrick F. Tremblay, one of those interested in the claim, declined to give his assent to said Company to pay the amount claimed by Mr. J. B. Cloutier, one of the assignees, when he had promised to do so, and when Dame Arthemise D. Tremblay, the original beneficiary of said policy, had given one similar to the one he was declining to sign. Seeing that, and fearing a suit from the part of the said J. B. Cloutier who was becoming very aggressive towards the Company, I suggested them to make a Judicial Deposit of the amount of said policy. On the 9th of April, 1901, I made the said Judicial Deposit for the Company and that very same day I notified all the interested under registered covers, that the said Judicial deposit had been made. Have had nothing to do in the suit of J. B. Cloutier vs. Tremblay et al., except where I was called as a witness.

The Company in making said Judicial Deposit, acted in good faith. The only alternative said Company had to protect itself was to make said Deposit.

Similar deposits have been made by said Company before that one, and in each case its doings and interests were protected by the laws of this Country, which permit such deposits to be made when two or more parties do not agree—as was the case between the said Cloutier and Tremblay.

The Company in making said deposit, has acted according to the dispositions of our Canadian laws; consequently, it had good reasons to believe that the said judgment was to be a full and complete bar to all proceedings being instituted against it on account of said policy.

After said deposit was made, said Company had nothing
315 to do with it and could not interfere in the dispute between the said J. B. Cloutier and Tremblay et al. The negligence was rather on the side of said Tremblay et al. for not having appeared in Court when they were requested to do so, and where they would have had an opportunity to confound the pretensions of said J. B. Cloutier. Said Company did not even know that the said Tremblay et al. were not contesting the pretensions of the said J. B. Cloutier.

The attitude of the Company towards Patrick F. Tremblay was absolutely indifferent, but the mother of the said Patrick F. Tremblay, Mrs. Arthemise D. Tremblay, being a relative to me by my wife, my personal sympathies were for her and her children, and I did my best in their favor in endeavoring to have the said J. B. Cloutier reduce his claim against them, in fact I succeeded to have it reduced to \$1614.00.

The attitude of the Company towards said J. B. Cloutier was absolutely indifferent, but personally, I did my best to have him reduce his claim against the Jean O. Tremblay estate, which he reduced to \$1614.00.

I have had two or three conversations with said Patrick F. Tremblay at the end of January, 1901, and they took place at my office where the said Patrick F. Tremblay admitted that his father's estate was in debt with said J. B. Cloutier to the extent of some \$1400, but as to the pretensions of the said J. B. Cloutier were for the whole amount of the policy and more he said he would assent to the payment of something more and would go as far as \$1600.00. He asked me to see Cloutier in order to endeavor to make him reduce his claim, and in case of success, to send him our assenting form No. 7, which he was to sign and return immediately. It is what I did, but he (Patrick F. Tremblay) finally declined to execute said form No. 7 although said Arthemise D. Tremblay and J. B. Cloutier had their own executed. The said Arthemise D. Tremblay called several times at my office and I have had several conversations
316 with her concerning the amount due to the said Cloutier on the said policy. Her visits to my office took place in the months of January, February, March and April, 1901. She was anxious to know what success I had obtained from said J. B. Cloutier re the reduction of his account, and when I informed her that said Cloutier had consented to reduce his said account to \$1614., she declared herself very satisfied and thanked me for my trouble. She declared also that her son Patrick F. Tremblay would be glad to learn that good news and would have no objection to the payment of the amount of said policy as arranged by me. She told me in several occasions that the balance between the amount payable under said policy was to revert to her, and that that money was all that she would have for her old days."

And your petitioner further says that it expects to prove by the testimony of Frank W. Bidwell, of Hartford in the State of Connecticut, at the head of the death claims department of the Ætina Life Insurance Company, in the nature of new evidence, that in said proceedings in Quebec it acted in perfect good faith; that said Frank W. Bidwell is expected to testify in relation thereto as follows:

"I had charge at the home office of the Ætina Life Insurance Company, of certain litigation arising out of said policy issued on the life of Jean O. Tremblay. On account of rival claims the said Company endeavored to get the claimants to reconcile their differences so that the amount due under the policy, viz., \$1959.49, could be paid without any unnecessary trouble or expense. The efforts of the Company were so far successful that said J. B. Cloutier was willing to reduce his claim to \$1614. and said Arthemise D. Tremblay was willing that said Company pay him this amount and the balance, viz., \$345.49 to said Patrick F. Tremblay, but the latter refused to assent to this arrangement, and as the ninety days had

317 nearly expired, and as said Company feared said Cloutier would bring suit, the said Company under the advice of its Canadian Counsel, Hon. N. W. Trenholme of Montreal, made a Judicial Deposit of the amount due under the policy, forwarding to said Trenholme a check for such purpose. Said Judicial Deposit was made in accordance with the laws of Quebec, said Patrick F. Tremblay was properly notified that the Judicial Deposit was made at Quebec, as were the said Arthemise D. Tremblay and others.

The said Company, and I as its representative, most certainly acted in good faith in making such judicial deposit. This has been the practice of the Company for many years where there were rival claimants, and they were unable to harmonize their interests. The Company invariably endeavors to have the rival claimants make an amicable arrangement between themselves, but if they are unable to do so, then, if in Quebec, a Judicial Deposit is made. The Company had nothing whatever to do in allowing the money to be paid over to J. B. Cloutier on said judgment.

My belief at the time said Judicial Deposit was made, was that the Company was perfectly protected in making the deposit. It had always been so held by the Quebec Courts. Said Company had nothing to do in allowing the money to be paid over to said Cloutier.

My belief at the time said Judicial Deposit was made was that said Deposit was a full and complete protection to said Company against any proceedings which might be brought on account of said policy. Said Company had repeatedly made such Deposits in other cases where there had been rival claimants and in every case had been fully protected.

Said Company did not co-operate with said Cloutier in any manner whatever in assisting him to bring his action to a speedy judgment, nor did said Company in any way cause, or try to cause, the money due on said policy to be paid to said Cloutier before
318 the determination of the suit of said Tremblay against said Company. In fact said Company had nothing to do with the case after the Judicial Deposit was made.

Said Company did not collusively or negligently allow any illegal judgment to be obtained by said Cloutier, and had nothing whatever to do with the judgment. After making the judicial Deposit said Company had nothing further to do with the case. The very object of said Deposit was to release the said Company from further liability and allow the rival claimants to settle the matter between themselves. Said Tremblay could have contested said Cloutier's claim if he had so desired. He had proper notice, and the papers, including the policy itself, were in Quebec, and even the assignment to said Tremblay was made there. The suit by Patrick F. Tremblay was not brought until long after said Company had made said Judicial Deposit.

I had full charge of this case from the time the proofs of death were first received, and know that everything in connection with the said Judicial Deposit was done in good faith. It was immaterial to the Company which party received the amount due under said policy, though it did all it could to have the rival claimants harmonize their interests before making Judicial Deposit in order to save expense and trouble for all parties concerned.

Your petitioner further says that it did not introduce or offer said new evidence at the trial and report of said action in the Supreme Judicial Court for said County of Androscoggin, not knowing at the time of said trial and report that the same was material or necessary to its defense of said action, and being advised that it was not so material or necessary.

And your petitioner says the judgment rendered in said action was for Two Thousand Two Hundred and Four Dollars and Seventy Six Cents (\$2204.76) debt or damage, and costs of suit taxed at 319 Forty Four Dollars and Ninety Cents (\$44.90); that said judgment is wrong and without foundation in law, whereby your petitioner claims that it is damnified in the sum of Four Thousand Dollars (\$4000), and that it is just and reasonable that a review of said action be granted for the reasons hereinbefore stated.

Wherefore, your petitioner prays that a review may be granted in said action, and whereas execution has been issued on said judgment, your petitioner further prays that the same may be superseded, and that a writ of supersedeas may be issued to stay further proceedings thereon, and for the return thereof to the office of the Clerk of Court; and also that the said Patrick F. Tremblay be notified of the pendency of this petition, and to appear and answer to the same if he shall see cause.

December 1st, A. D. 1906.

ÆTNA LIFE INSURANCE CO.,
By J. L. ENGLISH, *Vice Pres't.*

STATE OF CONNECTICUT,

County of Hartford, ss:

DECEMBER 1ST, A. D. 1906.

Personally appeared the above named J. L. English, V. P., and made oath to the foregoing and to the names of the witnesses to prove said new evidence, and what each is expected to testify.

Before me

WM. H. KELLOGG,
Notary Public.

320 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court, January Term, A. D. 1907.

ÆTNA LIFE INSURANCE COMPANY, Petitioner for Review,
vs.
PATRICK F. TREMBLAY.

And now comes the said petitioner and moves to amend its said petition by inserting after the following paragraph on page 16,

"Your petitioner further says that it did not introduce or offer said new evidence at the trial and report of said action in the Supreme Judicial Court for said County of Androscoggin, not knowing at the time of said trial and report that the same was material or necessary to its defense of said action, and being advised that it was not so material or necessary," the following:—

And your petitioner further says that it expects to prove from the testimony of the defendant, Patrick F. Tremblay, given under oath in the report of the suit of Ætina Life Insurance Company, in Equity vs. Patrick F. Tremblay and Arthemise D. Tremblay, in the nature of new evidence, that the said defendant in two letters written by him in January 1901, recognized the indebtedness of his father, the said Jean O. Tremblay to said J. B. Cloutier, (and the claim of said J. B. Cloutier to the proceeds of said policy of insurance) said testimony and letters being as follows:—

Q. I show you "Pl'ff Ex. JJ.," a letter purporting to be
321 written by you to T. H. Christmas, dated January 25, 1901.
Is that your signature?

A. Yes.

Q. I show you "Pl'ff Ex. KK.," purporting to be a letter written by you to T. H. Christmas, under date of January 31, 1901; is that your signature?

A. Yes.

Plaintiff introduces in evidence papers marked "Pl'ff Ex. JJ." and "Pl'ff Ex. KK."

Redirect:

Q. At the time you wrote the letters of January 25th and January 31st, had you had any time to investigate thoroughly the state of accounts between Mr. Cloutier and your father?

A. No.

Q. At the time you wrote those letters did you have any intention of waiving any rights which you might actually have on a complete settlement with Mr. Cloutier?

(Objected to. Adm.)

A. No, I did not. I was just getting some information, to find out about the standing of the account between my father and Cloutier. I was just inquiring to find out.

Q. Did you afterwards learn facts which led you to change your mind as to the condition of accounts between Cloutier and your father?

A. The more it went, the more I found out there should have been some payments credited to my father that I never had heard about, and I found out that the account due me on the policy was higher, and that is what I wrote the Company. I found out that money coming to me was higher than I thought.

Recross-examination :

322 Q. You know, of your own personal knowledge, nothing about your father's transactions with Mr. Cloutier?

Ct. You did not know them at the time they took place?

A. No.

Q. You knew nothing about these payments?

A. I never knew anything about it at the time they were made. I knew Cloutier was receiving money by authorization.

PL'F's EXH. JJ.

LEWISTON, ME., *January 25, 1901.*

T. H. Christmas, Esq., Montreal, P. Q.

In Re Policy, No. 149,296 on life of J. O. Tremblay.

DEAR SIR: In answer to yours of the 21st inst. I wish to let you know that there is about \$1500.00 due J. B. Cloutier of Quebec by my father for which sum, my father, I believe, has given a collateral assignment to Mr. Cloutier; but I will leave this one prove his claim. As to the other assignment in favor of the Permanent Building Society of Quebec; this Society has been paid and I will get the release of the said Society at once.

As my father died on the 21st, and that I wish this matter to be settled now, I take the liberty to ask you to send me the blanks, "Proof of Death" and other forms of the Company that I need of, to prove my claim as assignee, if Mr. Cloutier has not seen to it now.

An immediate answer will oblige me.

Respectfully yours,

P. F. TREMBLAY.

PL'F's EXH. KK.

LEWISTON, ME., *January 31, 1901.*

T. H. Christmas, Esq., Montreal, P. Q.

323 DEAR SIR: I take the liberty to ask you to request Mr. J. B. Cloutier, assignee of policy No. 149,296, to furnish his account at once; as I am assignee myself it is only just for him to show his claim so that I may settle the matter and come to an agreement, and so avoid delay and trouble. I wish you would do so and let me know when it will be possible for me to see such account. Please let him know that it is not sufficient to claim but that he must prove his claim and for that purpose that it is necessary for him to show all documents he may have specially the following contracts between him and my father: one April 16, 1887, one May 17,

1887, one May 26, 1887, one September 24, 1887, one August 31, 1888, and one April 16, 1889. And also his account for premiums that he has paid on the policy No. — before mentioned since 1891 exclusively, the premium for that year having been paid by the Quebec Permanent Building Association. His account must be complete; showing that he received \$294.00 in 1887, \$275.00 in 1889, and \$405.00 in 1890. This is what will show that there is a balance of about \$600.00 remaining due to me. As I believe that this is the shorter way to come to a settlement of this affair I hope that I will hear from you soon.

Respectfully yours,

P. F. TREMBLAY.

Your petitioner further says that it did not know of the existence of said letters at the time of the trial and report of the suit of Patrick F. Tremblay vs. The Aetna Life Insurance Company.

AETNA LIFE INSURANCE COMPANY,
By RALPH W. CROCKETT, *Its Attorney.*

324 STATE OF MAINE,
Androscoggin, ss:

FEBRUARY 11, A. D. 1907.

Personally appeared the above named Ralph W. Crockett and made oath to the foregoing and to the names of the witnesses to prove said new evidence, and what each is expected to testify, the facts therein stated being known to him and the petitioner being out of the State at the time of the filing of said amendment.

Before me,

STEPHEN J. KELLEY,
Justice of the Peace.

STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court.

AETNA LIFE INSURANCE COMPANY, Petitioner for Review,
v.
PATRICK E. TREMBLAY.

And now comes the said Patrick F. Tremblay, and defends, etc., when, etc., and says that said petition and the facts therein stated are insufficient in law to entitle the petitioner to a review.

Wherefore he prays judgment and for his costs.

By OAKES, PULSIFER & LUDDEN,
His Attorneys.

And the petitioner says that said petition and the facts therein stated are sufficient in law.

By RALPH W. CROCKETT,
Its Attorney.

325 STATE OF MAINE:

Supreme Judicial Court.

ÆTNA LIFE INSURANCE COMPANY, Petitioner for Review,

v.

PATRICK F. TREMBLAY.

After hearing on demurrer, I am of opinion that the petition sets forth sufficient to entitle the petitioner to be heard upon the merits.

The entry therefore will be "Demurrer overruled."

A. R. SAVAGE.

[*Exceptions.*]

The defendant filed a general demurrer which was joined. On hearing, the presiding justice was of opinion "that the petition set forth sufficient to enable the petitioner to be heard upon the merits, and overruled the demurrer."

To this ruling the defendant excepts and prays that his exceptions may be allowed.

The amended petition to be copied and made a part of exceptions. The petition is dated December 1st, 1906.

OAKES, PULSIFER & LUDDEN,

Attorney for Defendant.

Seen and agreed to.

RALPH W. CROCKETT,

Attorney for Adverse Party.

Exceptions allowed.

A. R. SAVAGE,

Justice of the Supreme Judicial Court Presiding.

A true copy.

Attest:

F. X. BELLEAU, *Clerk.*

326 [L. S.]

STATE OF MAINE:

Law Court.

AUGUSTA, Dec. 23, 1907.

ÆTNA LIFE INS. Co., Pet'r for Review,

vs.

PATRICK F. TREMBLAY.

Mandate.

(No Opinion or Rescript.)

In the above entitled cause pending before the Law Court, entered from the Supreme Judicial Court, in the County of Androscoggin,

Ordered, That the Clerk here, make upon the docket of this Court under said action the following entry, and certify the same to the Clerk of Courts for said County, to wit:

Exceptions overruled.

Review granted.

Attest:

C. W. JONES,
Clerk Law Court.

To F. X. Belleau, Esq., Clerk of Courts for the County of Androscoggin.

327 [Endorsed:] No. 118. Certificate of Decision. Ætna Life Ins. Co. vs. Patrick F. Tremblay. Androscoggin, ss. Clerk's Office, Sup. Jud. Court. Received and filed Dec. 24, A. D. 1907.
Attest: F. X. Belleau, Clerk.

328 ÆTNA LIFE INSURANCE COMPANY
v.
PATRICK F. TREMBLEY.

Appearances:

For defendant in review, Oakes, Pulsifer & Ludden.

For plaintiff in review, Ralph W. Crockett.

329 STATE OF MAINE,
Androscoggin, ss.:

Supreme Judicial Court, April Term, 1909.

ÆTNA LIFE INSURANCE COMPANY, in Review,
v.
PATRICK F. TREMBLEY.

Appearances:

For defendant in review, Oakes, Pulsifer & Ludden.

For plaintiff in review, Ralph W. Crockett.

Report of Evidence.

It is agreed that the report shall include the printed evidence in the suit of Patrick F. Tremblay v. the Ætna Life Insurance Company, reported to the law court at the January term, A. D. 1902, for Androscoggin County, and the printed evidence in the suit of the Ætna Life Insurance Company in equity v. Patrick F. Tremblay and Arthemise Tremblay, subsequently reported to the law court from said county, the copies of the former attested by I. W. Hanson, clerk, and of the latter, attested by John L. Reade, clerk, to be accepted and used as true copies. If a sufficient number of copies of

the above evidence cannot be obtained, new copies shall be printed, attested by F. X. Belleau, clerk.

330 The defendant in review waives the provisions of section 7 of Chapter 91 of the revised statutes, requiring the plaintiff in review to "produce and file an attested copy of the writ, judgment, proceedings and depositions or their originals in the former suit," except as said documents are included in the above evidence, it being admitted that said judgment follows the decision in Tremblay v. Aetna Life Insurance Company, 97 Me. 547, which may be referred to as if offered in evidence in this case, but need not be printed. The case is to be reported at the expense of the plaintiff in review upon so much of the evidence as is competent and legally admissible, the law court to render such judgment as the law and the evidence requires.

Mr. OAKES: I offer the auditor's report.

Mr. CROCKETT: I offer the writ of review, the pleadings, and docket entries. I also offer exhibits Nos. 1 to 18 inclusive, 18 A, 18 B, and 19 to 31 inclusive.

It is agreed that the translations only may be presented to the law court.

The foregoing is a correct transcript of all the evidence in the case.

W. H. CORNFORTH,
Court Stenographer.

By agreement of the parties, the case is reported for the determination of the law court, upon so much of the foregoing evidence as is legally admissible.

L. A. EMERY,
Justice Presiding.

Writ of Review.

To the Sheriff of our County of Androscoggin, or either of his Deputies, Greeting:

We Command You to summon Patrick F. Tremblay, of Lewiston, in the County of Androscoggin, to appear before our
331 Justice of our Supreme Judicial Court, next to be holden at Auburn within and for the County of Androscoggin aforesaid, on the third Tuesday of January, A. D. 1908, then and there to answer to The Aetna Life Insurance Company, a corporation located at Hartford in the State of Connecticut in a plea of review of a plea of debt commenced at our Supreme Judicial Court, begun and holden at said Auburn on the third Tuesday of September, A. D. 1901, by the said Patrick F. Tremblay against the said Aetna Life Insurance Company in the words following, to wit:

[L. S.] STATE OF MAINE,
Androscoggin, ss:

To the Sheriffs of our respective Counties or either of their Deputies,
 Greeting:

We Command You to attach the goods and estate of The Ætina Life Insurance Company, a corporation duly established by law and having its principal office and place of business at Hartford, in the State of Connecticut and doing business in the State of Maine, and having for its agent and attorney in the State of Maine the Insurance Commissioner of the State of Maine, whose office is at Augusta, in the county of Kennebec, to the value of Four Thousand dollars; and summon the said Defendant (if it may be found in your precinct), to appear before our Justices of our Supreme Judicial Court, next to be held at Auburn, —, within and for our said County of Androscoggin, on the third Tuesday of September A. D. 1901, then and there in our said Court to answer unto Patrick F. Tremblay, of Lewiston, in said County of Androscoggin.

332 In A Plea of Debt, for that, on the thirteenth day of August, A. D. 1885, at Quebec, in the Province of Quebec, to wit, at said Auburn, the said defendant, by its obligation in writing, to wit, its policy of insurance of that date, numbered 149,296, in consideration of certain payments then made and thereafter to be made by one Jean O. Tremblay, and of certain conditions therein set forth, did insure the life of said Jean O. Tremblay, and did promise and agree that it would pay unto one Arthemise D. Tremblay, the wife of said Jean O. Tremblay, her executors, administrators or assigns, the sum of two thousand dollars, upon the death of the said Jean O. Tremblay, and thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, by two assignments in writing by them signed, copies of which are filed in court with this writ, the said Jean O. Tremblay and Arthemise D. Tremblay, for valuable consideration to them then and there paid, did sell, assign and transfer unto the plaintiff all their right, title and interest in and to said policy of life insurance numbered 149,296 as aforesaid, and all benefit and advantage to be derived therefrom to the extent of such interest as they might have when said policy should become a claim.

And the plaintiff avers that due notice of said assignments was thereupon duly sent to said defendant, and by it received, accepted and approved.

And the plaintiff avers that the said Jean O. Tremblay died on the twenty-first day of January, A. D. 1901; that thereupon, within one year from the day of such death, due and sufficient proof thereof, as required by said contract of insurance, was forwarded to said defendant; and that any further or other proof of the death of said Jean O. Tremblay was then and there waived by said defendant.

Whereby and by reason of the premises, an action hath accrued to the plaintiff to demand and have of the said defendant
 333 the said sum of two thousand dollars; yet the said defendant, though often requested, has not paid said sum, but neglects and refuses to do so.

Also, For that the said defendant, at said Auburn, on the day of the *upr*chase of this writ, was indebted to the plaintiff in the sum of three thousand dollars, for goods then bargained and sold by the plaintiff to the said defendant, at its request; and for work then done and materials furnished by the plaintiff for the said defendant, at its request; and for money then loaned by the plaintiff to the said defendant, at its request; and for money then paid by the plaintiff for the use of the said defendant, at its request; and for money then received by the said defendant for use of the plaintiff, at its request; and for money found to be due from the said defendant to the plaintiff upon an account then stated between them.

Whereby an action hath accrued to the plaintiff to demand and recover of the said defendant said sum; yet though requested, the said defendant has never paid the same, but wholly neglects to do so.

Under this count the plaintiff will claim to prove that said defendant, on the thirteenth day of August, A. D. 1885, issued its policy of insurance to one Jean O. Tremblay, upon the life of the said Jean O. Tremblay, for the sum of two thousand dollars, payable upon the death of the said Jean O. Tremblay to Arthemise D. Tremblay, the wife of the said Jean O. Tremblay, which said policy was thereafterwards, to wit, on the fourteenth day of January A. D. 1901, assigned in writing by said Jean O. Tremblay and Arthemise D. Tremblay to the plaintiff, for valuable consideration, copies of which assignments are filed in court with this writ; and that thereafterwards, to wit, on the twenty-first day of January, A. D. 1901, said Jean O. Tremblay died, while said policy was in full force; and that said defendant

received due notice of said assignments and of the death of
334 said insured, and waived any further or other notice thereof.

To the damage of the said plaintiff (as he says), the sum of Four thousand dollars, which shall then and there be made to appear, with other due damages.

And have you there this Writ, with your doings therein.

Witness, Albert R. Savage, Esquire, Justice of our said Court, at Auburn, the twenty-second day of May in the year of our Lord one thousand nine hundred and one.

I. W. HANSON, *Clerk.*

At the April Term, A. D. 1903, of which Court judgment was rendered that the said Patrick F. Tremblay recover judgment against the said Aetna Life Insurance Company for the sum of Twenty-two hundred and four dollars and seventy-six cents debt or damage, and forty-four dollars and ninety cents costs of suit, which judgment the said Aetna Life Insurance Company as it has set forth in its petition for this Writ, says is wrong and erroneous, and that it is damnified the sum of Four Thousand dollars, as shall then and there be made to appear.

Wherefore, for reviewing the said judgment, and recovering back from the said Patrick F. Tremblay the said sum of Twenty-two hundred and four dollars and seventy-six cents damage, and forty-four dollars and ninety cents costs of said *said*, and fifteen cents more for one Writ of Execution, with interest on the same since the rendition

of said judgment, and also for recovering against said Patrick F. Tremblay, its costs of Court in this action, said Ætina Life Insurance Company brings this suit, which suit it is authorized to bring by the Supreme Judicial Court held at Auburn, within and for said County of Androscoggin, on the third Tuesday of September, A. D. 1907, pursuant to the law in such case made and provided and in accordance with a certificate of decision from the Law Court in said Petition, and to the said Patrick F. Tremblay; you are hereby commanded and summoned to appear at said Supreme Judicial Court next to be holden at said Auburn on the third Tuesday of January A. D. 1908 as aforesaid to answer to said Ætina Life Insurance Company, Plaintiff in review, as in this writ is set forth. And have you there this writ, with your doings therein.

Witness, Albert R. Savage, Esquire, Justice of our said Court, at Auburn, this Fourth day of January in the year of our Lord one thousand nine hundred and eight.

F. X. BELLEAU, *Clerk.*

Plea—General Issue.

And now the said Defendant comes and defends, &c., when and where, &c., and for plea says that it is not indebted to the plaintiff in manner and form as the Plaintiff has declared against it; and of this it puts itself upon the country.

By RALPH W. CROCKETT,
Its Attorney.

And the Plaintiff likewise.

By OAKES, PULSIPER & LUDDEN,
His Attorneys.

And for a brief statement of special matter of defense to be used under the general issue above pleaded, the said Defendant further say:

That at the death of the insured the insurance money amounting to \$1959.49 was claimed by the plaintiff and by one Jean B. Cloutier under separate assignments. As said assignees were not able to agree upon the amount to be paid to each, the defendant company on the ninth day of April 1901, deposited said sum with the Treasury Department of the Province of Quebec under the following sections of the Revised Statutes of the said Province:

“Article 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer.

Article 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into Court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant.”

That on the 22nd day of April the said Cloutier commenced proceedings in the Superior Court of said Quebec to obtain the money thus deposited and on the eighth day of June of said year said Court rendered judgment in said proceedings as follows:

“(Translation.)

CANADA,

*Province of Quebec,
District of Quebec:*

In the Superior Court the 9th Day of June, 1901.

Present: The Hon. Judge L. B. Caron.

No. 1970.

337 JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During His Lifetime of the Town of Chicoutimi, Surveyor, the said Heirs Residing at Lewiston, Me., U. S. A., Defendants; the Aetna Life Insurance Company of Hartford, Conn., U. S. A., and Having Its Business Office in This Province, in the City of Quebec; Dame Arthemise Dumais, Widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, These Latter Two of Lewiston, Me., U. S. A., “Misc-en-cause,” the said Patrick F. Tremblay, Furthermore, One of the Defendants Aforesaid, “Misc-en-cause.”

The Court having examined the Procedure and the proof on record, and heard the plaintiff by his lawyers, on the merit *ex parte*, the present case having been inscribed for proof and hearing at the same time.

Maintains the present action consequently adjudges and condemns the defendants to pay to the Plaintiff the sum of \$2018.39, with interest from the 23rd of April last, and the costs. Furthermore declares that the Plaintiff as assignee of the said insurance policy on the life of the said Jean Ovide Tremblay No. 149,296, issued by the Aetna Ins. Co., *misc-en-cause*, has a right to the amount deposited in the Treasury Department which shall be handed over to him upon presentation of the present judgment, the whole with costs against the Defendants alone.

True copy.

N. FORTIER, *D. P. S. C.*”

That on the 25th day of said June said amount of \$1949.59 was paid to said Cloutier by said Treasury Department pursuant to said judgment.

338 That said judgment is a bar to this action.

And the defendant further says by way of brief statement that the proceeds of the policy declared upon in the plaintiff's writ

were at the death of said insured claimed by said Cloutier under said collateral assignment executed in his favor on November 24, 1891. Said Cloutier having been awarded the entire proceeds of said policy by the Superior Court of the Province of Quebec, the money being paid over to him on June 25th, 1901, by the treasurer of said Province in pursuance of the order of said Court, the defendant company then became subrogated to the right of said Cloutier to said insurance money or any part thereof and now interposes that right against the claims of the plaintiff in this action, as an equitable defence thereto.

And the defendant further says by way of brief statement that the plaintiff cannot recover in this action because said action is brought in the name of the assignee, neither of his assignments having been assented to by said defendant.

And the defendant further says by way of brief statement that the plaintiff cannot recover in this action because the assignments mentioned in the plaintiff's declaration are of a part of an entire sum.

Docket Entries.

695.

ÆTNA LIFE INSURANCE CO.

v.

PATRICK F. TREMBLAY.

(Review.)

R. W. Crockett.

Oakes, Pulsifer & Ludden.

1908 Jan. T. 28 Def't in original suit of Patrick F. Tremblay v. The Ætna Life Ins. Co. to be allowed to amend plea by adding brief statement and to have leave to set out in the brief statement
339 several distinct defences and to plead double. Amendment filed and allowed. Hon. F. M. Drew appointed auditor as per Memo. on file. Memorandum filed. 32 Commission issued to auditor.

1908, Sept. T., 12.—Report of Auditor filed.

1908, Sept. T., 22.—Fees of Auditor allowed.

STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court, January Term, 1902.

PATRICK F. TREMBLAY

v.

THE AETNA LIFE INSURANCE CO.

[Appearances:]

Patrick F. Tremblay; Oakes, Pulsifer & Ludden, Attorneys for Plaintiff.

Noble & Crockett, Attorney- for Defendant.

[Declaration.]

In a Plea of Debt, for that, on the thirteenth day of August, A. D. 1885, at Quebec, in the Province of Quebec, to wit, at said Auburn, the said defendant, by its obligation in writing, to wit, its policy of insurance of that date, numbered 149,296, in consideration of certain payments then made and thereafter to be made by one Jean O. Tremblay, and of certain conditions therein set forth, did insure the life of the said Jean O. Tremblay, and did promise and
340 agree that it would pay unto one Arthemise D. Tremblay, the wife of said Jean O. Tremblay, her executors, administrators or assigns, the sum of two thousand dollars, upon the death of the said Jean O. Tremblay, and thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, by two assignments in writing by them signed, copies of which are filed in court with this writ, the said Jean O. Tremblay and Arthemise D. Tremblay, for valuable consideration to them then and there paid, did sell, assign and transfer unto the plaintiff all their right, title and interest in and to said policy of life insurance numbered 149,296 as aforesaid, and all benefit and advantage to be derived therefrom to the extent of such interest as they might have when said policy should become a claim.

And the plaintiff avers that due notice of said assignments was thereupon duly sent to said defendant, and by it received, accepted and approved.

And the plaintiff avers that the said Jean O. Tremblay died on the twenty-first day of January, A. D. 1901; that thereupon, within one year from the day of said death, due and sufficient proof thereof, as required by said contract of insurance, was forwarded to said defendant; and that any further or other proof of the death of said Jean O. Tremblay was then and there waived by said defendant.

Whereby and by reason of the premises, an action hath accrued to the plaintiff to demand and have of the said defendant the said sum of two thousand dollars; yet the said defendant, though often requested, has not paid said sum, but neglects and refuses so to do.

Also, for that the said defendant, at said Auburn, on the day of the purchase of this writ, was indebted to the plaintiff in the sum

of three thousand dollars, for goods then bargained and sold by the plaintiff to the said defendant, at its request; and for work then done and materials furnished by the plaintiff for the said defendant, at its request; and for money then loaned by the plaintiff to said defendant, at its request; and for money then paid by the plaintiff for the use of the said defendant, at its request; and for money then received by the said defendant for the use of the plaintiff, at its request; and for money found to be due from the said defendant to the plaintiff upon an account then stated between them.

Whereby an action hath accrued to the plaintiff to demand and recover of the said defendant said sum; yet though requested, the said defendant has never paid the same, but wholly neglects so to do.

Under this count the plaintiff will claim to prove that said defendant, on the thirteenth day of August, A. D. 1885, issued its policy of insurance to one Jean O. Tremblay, upon the life of the said Jean O. Tremblay, for the sum of two thousand dollars, payable upon the death of the said Jean O. Tremblay to Arthemise D. Tremblay, the wife of the said Jean O. Tremblay, which said policy was thereafterwards, to wit, on the fourteenth day of January, A. D. 1901, assigned in writing by said Jean O. Tremblay and Arthemise D. Tremblay to the plaintiff, for valuable consideration, copies of which assignments are filed in court with this writ; and that thereafterwards, to wit, on the twenty-first day of January, A. D. 1901, said Jean O. Tremblay died, while said policy was in full force; and that said defendant received due notice of said assignment and of the death of said insured, and waived any further or other notice thereof.

To the damage of the plaintiff (as he says), the sum of four thousand dollars. Writ dated May 22, 1901.

Plea general issue.

Law on Report.

Counsel for plaintiff introduces the following documentary evidence:

342 Policy dated August 13, 1885, marked "Pl'ff Ex. A."

Assignment of Policy, produced by the defendant, from J. O. Tremblay and Arthemise D. Tremblay to P. F. Tremblay; marked "Pl'ff Ex. B."

Assignment from J. O. Tremblay and Arthemise D. Tremblay to P. F. Tremblay, marked "Pl'ff Ex. C."

Letter from The Ætna Life Insurance Co. to P. F. Tremblay, dated January 19, 1901, marked "Pl'ff Ex. D."

It is admitted that there was due on Policy No. 149,296, issued by The Ætna Life Insurance Co. on the life of J. O. Tremblay, the sum of \$1,959.49 at the time of his death on January 21, 1901, payable in ninety days after satisfactory proofs of death.

Defense.

It is admitted that the Aetna Life Insurance Co. has received satisfactory proofs of death.

Counsel for defendant introduces the following documentary evidence, subject to objection:

Memorandum of Agreements and Admissions; marked "Def't Ex. 1."

Notarial Act for \$541, dated August 16, 1889; marked "Def't Ex. 2."

Assignment of Policy to J. B. Cloutier; marked "Def't Ex. 3."

Affidavit and Account of J. B. Cloutier; marked "Def't Ex. 4."

Affidavit of P. F. Tremblay; marked "Def't Ex. 5."

Affidavit of A. D. Tremblay; marked "Def't Ex. 6."

Receipt, Judicial Deposit; marked "Def't Ex. 7."

Notices, Judicial Deposit; marked "Def't Ex. 8."

Declaration in the suit of J. B. Cloutier; marked "Def't Ex. 9."

343 Order of notice and default in same suit; marked "Def't Ex. 10."

Proofs in same suit; marked "Def't Ex. 11."

Judgment in same suit; marked "Def't Ex. 12."

Order for \$25.00, given by J. O. Tremblay acting by A. D. Tremblay; marked "Def't Ex. 13."

Letter of A. D. Tremblay; marked "Def't Ex. 14."

Deposition of J. B. Cloutier.

It is agreed that the defendant may, if it wishes, furnish before the case is printed a copy of the statute or statutes under which the order of notice was published in the Cloutier suit.

It is further agreed that the defendant may print as a part of the case such portions of the statutes of Quebec, Articles 1102 to 1205, inclusive, as relates to Judicial Deposits.

It is further agreed that any and all of the above evidence, if admissible at all, may, for the purposes of this case, be deemed admissible under the general issue.

Counsel for Plaintiff offers in rebuttal the following evidence:

Contract between J. B. Cloutier and J. O. Tremblay, dated August 31, 1888; marked "Pl'ff Ex. E."

Statement of payments by the Permanent Construction Society of Quebec to Mr. J. B. Cloutier; marked "Pl'ff Ex. F."

Extract from the great book of the Crown Lands, in the matter of J. O. Tremblay and J. B. Cloutier; marked "Pl'ff Ex. G."

STANLEY TREMBLAY, called by the plaintiff testified:

Q. Are you the son of J. O. Tremblay?

A. Yes sir.

Q. And a brother to this plaintiff?

A. Yes sir.

344 Q. In the early part of 1901 did you have a conversation with J. B. Cloutier?

A. Yes sir.

Q. At that time did he give you a statement of what he claimed as his account against your father?

A. Yes sir, he did.

Q. I show you "Pl'ff Ex. H." and ask you if that is the account?

A. Yes, that is the account I had from Mr. Cloutier.

Statement marked "Pl'ff Ex. H." put in evidence. (Objected to.)

Q. Did Mr. Cloutier make any statement to you as to this account and if so what?

A. No, he said that is all the amount there was due; he said "I explained to your brother all about it," and he said "You can take this account so it will be more satisfactory."

Mrs. ARTHEMISE D. TREMBLAY, called by the plaintiff, testified:

Q. You are the widow of Mr. J. O. Tremblay?

A. Yes sir.

Q. Where was your home at the time of your husband's death?

A. Chicoutimi.

Q. How far is that from Quebec?

A. 180 miles.

Q. What was your husband's business?

A. Surveyor and agent for the Crown Lands.

Q. What pay did he get for his work as government officer?

A. \$800 and \$200 in commissions.

Q. The commission was at what rate on what?

A. 10 per cent. on moneys received for the sale of government lands.

345 Q. Was the money for the price of the government lands paid to him?

A. Yes sir.

Q. And his commissions were ten per cent. of such sums as might be paid him in this way?

A. Yes sir.

Q. Was there any limit to the amount of commissions in a single year, and if so what?

A. Yes sir, he was not to receive over \$200 in commissions.

Q. Was your husband personally present when any contracts were made in the latter part of his life, with Mr. Cloutier?

A. My husband wasn't present; I was authorized to act for him.

Q. The business with Mr. Cloutier was done through you entirely?

A. By myself.

Q. Do you remember the contract of August 31, 1888?

A. What is the name of the notary and how much is the amount?

Q. It is the \$479 contract?

A. Yes, I remember.

Q. Was there anything left due to Mr. Cloutier at that time beside the amount of \$479 which was stated in that contract?

A. There was something due him before the contract; we talked of small sums due previously and made all of them in one amount

and with the money I borrowed made that four hundred and some odd dollars.

Q. That was understood then to be a settlement up to that time?

A. Yes sir.

Q. I show you a memorandum marked "Pl'ff Ex. G." showing three orders of \$125 each upon the government, to J. B. Cloutier and one order of \$200, and ask you if in the first place you know about them?

A. I don't remember, I never borrowed any such sum.

Q. Did you borrow any such sums from Mr. Cloutier?

A. No sir.

Q. Did you borrow for your husband any sums of money up to 1891 except such as were covered by notarial agreements?

A. I borrowed \$25.

Q. Was that before or after the 1st of January, 1891; isn't that an item of October 27, 1891?

A. That is right; \$25.

Q. Did your husband, or you for him, borrow any money from J. B. Cloutier in any other way except as under the notarial agreements?

A. No sir.

Q. Coming now to the contract of August 16, 1889, for \$541 do you remember that contract?

A. Yes, I remember.

Q. How much money was actually borrowed at that time?

A. \$400.

Q. What was the balance of the sum; how was that made up?

A. Interest at 8 per cent. and a \$20 bonus and \$10 for the notary.

Q. On what was the interest reckoned if you know?

A. On \$400.

Q. To cover what time if you know?

A. For two years, as much as I can remember.

Q. Were payments on that contract to commence before the two years?

A. He gave him orders on the government before the two years were up.

Q. By the contract you understood that the payments were to commence about two years later?

347 A. Yes, it was to pay sooner.

Q. What do you mean by interest; was the interest to cover the time between the date of the contract, and the time when you were to commence to make the payments?

A. Until the two years had expired.

Q. Who, if anybody, when these contracts were made was present representing or acting for Mr. Cloutier?

A. The notary and Mr. Cloutier and myself.

Q. Was Mr. Gaborier the notary?

A. No sir.

Q. Was he present with Mr. Cloutier at any of the arrangements when the contracts were made?

A. Before I borrowed the money I asked Mr. Gaborier to see if I could get the money.

Q. What money is that?

A. The \$400.

Q. What else did Mr. Gaborier have to do with it if anything?

A. Each time I borrowed the money I always saw Mr. Gaborier first as I considered him his agent.

Q. As whose agent?

A. Mr. Cloutier's.

Q. Who was Mr. Gaborier and what was his business?

A. He was president of the building society.

Q. The Permanent Construction Society of Quebec?

A. Yes sir.

Q. Did he act for Mr. Cloutier between you and Mr. Cloutier in matters of the Company?

A. I thought he was his agent.

Q. Did you make any of your arrangements with Mr. Cloutier in regard to matters of the building society through Mr. Gaborier?

A. I had borrowed money from the construction company through Mr. Gaborier who was its president.

348 Q. Did you make any arrangements with Mr. Cloutier about your money matters, about your insurance or any of the matters connected with the construction society, through Mr. Gaborier; did Mr. Gaborier do any of the business between you and Mr. Cloutier?

A. The Construction Company had the policy as collateral security.

Q. Did you make any of your financial arrangements in connection with the construction company with Mr. Cloutier through Mr. Gaborier?

A. Yes sir, certainly.

Q. Did your husband own any real estate which was mortgaged to the society?

A. Yes sir.

Q. What finally become of the property?

A. We gave orders to the construction company who had a mortgage on it to sell it.

Q. To whom?

A. Mr. Gaborier told me that Mr. Cloutier wanted to buy it.

Q. What arrangements were made about it?

A. When I left Chicoutimi I was offered \$1200 for the property, and I told Mr. Gaborier not to sell it for less than that amount.

Q. Did you finally make arrangements for him to sell it to any particular person?

A. No, not particularly, but I had told him that I wanted to sell it and Mr. Cloutier told me not to sell for less than \$1200.

Q. What was finally done with it?

A. It was sold to Mr. Cloutier for the amount due the construction company, but it was understood that he would give us the surplus of the money due.

349 Q. How much was the amount due the construction company?

A. Nine hundred and sixty and some odd dollars, I don't remember.

Q. \$967.00?

A. I don't remember very well about that.

Q. What was Mr. Cloutier to do with the balance of the \$1200 above the \$967?

A. Mr. Gaborier told me he was to pay me that money surplus.

Q. Pay you for yourself or your husband?

A. My husband.

Q. Was any arrangements made about this \$233 in connection with the payment of premiums, and if so, what?

A. No, I don't remember.

Q. Was any arrangement made by which Mr. Cloutier should hold the money and if so what?

A. If arrangements were made they were made with Mr. Gaborier.

Q. Have you ever had any talk with Mr. Cloutier since that time about this house business?

A. I spoke to him about it and he told me my husband was in debt and he kept that as a guaranty.

Q. When was that?

A. In the month of December, last year.

Q. December 1901 or 1900?

A. Last winter, 1901.

Q. Your husband died in January, 1901?

A. Yes sir; it must be 1900.

Q. Have you ever had any other talk with Mr. Cloutier about that?

A. I went to his house in August, and he would not receive me, saying that he didn't owe anything.

Q. That was last August?

A. Yes sir.

350 Q. Did Mr. Cloutier afterwards sell this property if you know?

A. Yes sir.

Q. Do you know to whom he sold it?

A. To Mr. Baily. William Baily.

Q. Do you know anything about a person named Coloza, mentioned in this bill I show you marked, "Plff. Ex. H."?

A. Yes, I know Mr. Coloza.

Q. Did he have anything to do with that property?

A. Not with us; I didn't know.

Q. Did he have anything to do with it anyway?

A. I don't know anything in any way.

Q. What do you understand about that item of \$44 which Mr. Cloutier claims against your husband's estate; what is it for?

A. I don't know anything about it; I never had anything to do with Mr. Coloza.

Q. Did it have anything to do with the house business and if so what?

A. No, never.

Q. Do you know anything about that item at all?

A. No sir.

Q. Do you know those two last names there?

A. I do not know them.

Q. In August 1901 when you tried to talk with Mr. Cloutier did you say anything to him about Mr. Gaborier and if so what?

A. I had seen Mr. Gaborier and asked him to see Mr. Cloutier.

Q. You had a talk with Mr. Cloutier in August, 1901?

A. Certainly.

Q. At that time did you say anything to him about Mr. Gaborier and if so what?

A. I don't think so.

351 Cross-examination:

Q. Your husband borrowed considerable money from time to time, did he not?

A. Yes sir.

Q. What was the occasion of his borrowing money?

A. To pay debts and our business.

Q. And wasn't your husband during the last ten years of his life financially embarrassed?

A. No sir.

Q. He borrowed large sums from Mr. Cloutier?

A. We borrowed.

Q. And he borrowed large sums from the Quebec Building Association?

A. Yes, we borrowed from the Construction Company.

Q. And you were obliged to sell your house on account of the mortgage which the Quebec Society had on it?

A. No, the company did not press for that.

Q. The house was mortgaged for nearly what it was worth?

A. For two thirds.

Q. Did you and your husband borrow from other sources?

A. No sir.

Q. On August 31, 1888, when you executed this notarial act of \$479 in behalf of your husband, you owed, or he owed, to Mr. Cloutier that amount?

A. No, we owed him several small loans and I borrowed another amount and we got the whole amount together and that made the sum of \$479.

Q. When was this sum of \$479 paid?

A. From that date we began to pay by the government and the construction company.

Q. When was the payment of this \$479 completed?

352 A. I don't remember; I had given them orders on the government and as I thought him honest I did not ask him when it was through, when it was paid.

Q. Were you more than two years paying this \$479?

A. I don't think so.

Q. You don't know when you made the last payment?

A. No, I don't remember.

Q. On August, 1889, you executed on behalf of your husband a notarial act to J. B. Cloutier to the amount of \$541?

A. Yes sir.

Q. That was to be paid at the rate of \$25 per month?

A. Yes, sir.

Q. The first payment was to be made January, 1891?

A. I understood that if I could——

Q. The question is "Yes" or "No." The first payment was to be made January, 1891?

A. Yes sir, I remember.

Q. Do you know of your own knowledge whether your husband borrowed from Mr. Cloutier between August 31, 1888, and August 16, 1889, any other sums of money?

A. He did not borrow any.

Q. How do you know?

A. Because I always made the business with him and always borrowed the money.

Q. May 28, 1888, there was a transaction between your husband and Mr. Cloutier for \$125; what was it?

A. That was settled in the first act that you have in hand; it was all put together.

Q. What was the transaction?

A. I don't remember now.

Q. On September 29, that same year, which was after the first notarial act, there was a transaction of \$125; what was that?

A. We never borrowed that.

Q. What was the transaction?

353 A. I don't know.

Q. I show you this on the paper?

A. I can not know it, I did not make any.

Q. I show you the paper marked "Plff Ex. G." and ask you what that \$125 transaction was?

A. I think that was before the notarial act.

Q. No, it was after?

A. Sometimes I made those transfers to pay what I owed. All the transfers that were made were made to pay for what I owed on the two notarial acts.

Q. Can you explain this particular transaction?

A. All these transfers were made in payment of money due by notarial acts to Mr. Cloutier.

Q. Is the answer the same in regard to the next transaction of February, 1889, \$125.

A. Yes sir, all the transfers that are here were made in payment of money due on notarial acts.

Q. When you executed this notarial act of \$541, August 16, 1889, you understood, did you not, that that contained an agreement to assign an insurance policy to Mr. Cloutier as soon as the Quebec society had given up its claim on the policy?

A. I was to transfer it to him as collateral security.

Q. You understood you were to make an assignment, your husband or both of you?

A. I didn't sign for myself, I signed for my husband.

Q. Signed what?

A. This notarial act.

Q. Did you know at the time the assignment was made to Mr. Cloutier that the assignment was made?

A. The Construction Company was to make the transfer.

Q. Did you know at the time the assignment was made to Mr. Cloutier that the assignment was made?

354 A. I don't remember at the time it was made but I had given orders to the construction company to make the assignment and turn it over to them and put it in his hands.

Q. The policy?

A. Yes, to give him the policy.

Q. And did you understand from that time until your husband's death that Mr. Cloutier had an assignment of this policy?

A. I knew he had it in his hands; I didn't know whether he had a transfer or not; I knew the company had given it to him.

Q. Do you say you called on Mr. Cloutier in August last year?

A. Yes sir.

Q. What did you ask him?

A. I went to see him in relation to the house.

Q. How much did your husband owe your son P. F. Tremblay at the time the assignment to him was made a few days before your husband's death?

A. We assigned it to him but we did not owe him.

Q. You did not owe him anything?

A. No sir.

Q. The item on Mr. Cloutier's account, "Plff. Ex. H.," March 19, 1889, deposited on bill No. 3, paid by me to the government \$54.89; do you know anything about that?

A. I do not know anything about it.

Q. What do you know about the item on this same bill, June 16, 1890, deposited on bill No. 4, paid by me to the government \$76?

A. I don't know anything about it.

Q. What do you say about the item of April 30, money paid to H. A. Tremblay to pay his debts to the government \$100?

A. I don't know anything about it.

355 Q. What do you say about the item of October 27, 1891, money paid to Mr. J. O. Tremblay, \$25?

A. That is correct, I had \$25.

Q. Did you understand that whatever you or your husband or your son, H. A. Tremblay owed to Mr. Cloutier at the time of your husband's death, was covered by and guaranteed by this assignment of this policy to Mr. Cloutier?

A. No, it was understood that it was not to guarantee Mr. H. A. Tremblay's debts.

Q. When did your husband cease to act as crown land agent?

A. I don't remember.

Q. Was it in the fall of 1889?

A. I don't remember.

Q. About eleven or twelve years before he died?

A. It was February, 1890, that he severed his connection with the crown land office.

Q. At that same time your son was appointed?

A. Yes sir.

Q. How long did your son H. A. Tremblay continue to act as crown land agent?

A. About three years and six months, I don't remember very well.

Q. Did you last spring see in the newspapers a notice of a suit brought by J. B. Cloutier to obtain this insurance money?

A. Yes sir.

Q. When did you see it?

A. In the month of April.

Q. Did you send a copy of the notice or a copy of the paper to your son P. F. Tremblay?

A. Yes sir.

Q. When did you send him that?

A. About the same time, in the month of April.

356 Q. Did you mail it to him?

A. Yes sir, I sent a letter in which I put the notice.

Q. Did he answer the letter?

A. No he did not answer.

Q. Why didn't you appear in answer to that suit in court?

A. Because I had no business there.

Q. I show you "Def't Ex. 15." Is that the notice you sent your son P. F. Tremblay?

A. Yes sir.

Q. That is the identical paper is it?

A. Yes sir.

Q. You cut that out of the newspaper yourself?

A. Yes sir.

Q. And you mailed it to him in April?

A. Yes sir.

Q. You knew his address at that time?

A. Yes sir.

(Notice marked "Def't Ex. 15" put in evidence.)

Direct resumed:

Q. In reference to payments made by your son P. F. Tremblay, and before the assignment was given to him in 1901, had he made payments for you and by your request for various things, furniture and other things and paid up bills of your other sons?

A. Yes, I didn't remember it.

Q. To a considerable amount?

A. To about \$200.

Q. And before had he paid at your request some sums of money for his brother who was pursuing his studies?

A. Yes sir.

Q. When he was here in Lewiston, Stanley?

A. I know he has paid some money for him.

Q. Did you write to him to do so?

A. Certainly I did.

357 P. F. TREMBLAY, the plaintiff, testified:

Q. Are you the plaintiff in this case.

A. Yes sir.

Q. I wish to call your attention to the time when you called upon Mr. Cloutier about a year ago; do you recollect that time?

A. Yes sir.

Q. Where did you call upon him?

A. I called at his home.

Q. Who was with him?

A. Notary Dumais.

Q. A relation of yours?

A. Yes, my mother's cousin.

Q. By whose request did you call upon Mr. Cloutier?

A. By my father's request.

Q. And for what purpose?

A. My father asked me to see Cloutier and get a settlement of the final account with him.

Q. Did you know Cloutier previous to that?

A. No sir.

Q. Tell what you recollect of the conversation that occurred as you recollect it?

A. I came in with Mr. Dumais and Mr. Dumais introduced me as being the son of J. O. Tremblay of whom he had spoken a year ago, and he said you told me that Mr. Tremblay could see his father's account and make a settlement about it and I have brought him here, and then Cloutier says all right, pleased to meet you, and then we went to his desk and he took some papers there and a book and says "Here is the account between your father and I," and he opened the book, a little book of accounts and then he began to read the payments, and after he read two or three I asked him to wait, that I wanted to take notes of them. He says "I have no ob-
358 jection." So he says come to the right hand of the desk and sit there and he passed me a pencil and tore a page out of a note book and gave it to me and I took my notes. I was looking at the book he was reading from to see whether I got every item on the book, I was watching very closely.

Q. I show you a sheet of paper marked "Pl'ff Ex. I." Is that the memorandum you made at the time?

A. Yes, that is the one; the first item there is for \$250; that date I have here April 16, 1887. It was marked on the book "Transfer of insurance." The second item was May 17, 1887, \$240. to notary, A. Tremblay. May 26, 1887, \$60. September 24, 1887, to notary L. P. Sirors \$310. April 16, 1889, \$541.

Q. Is that April or August?

A. I have it April but I know the contract is August so it was a mistake in my writing. The next is to notary P. Duval, \$10. fees for making the contract last mentioned. The next item, February 13, 1890, loan to H. A. Tremblay, \$100;- March 12, 1891, loan to H. A. Tremblay, \$20; April 13, 1891, loan to H. A. Tremblay \$10. November 27, 1891, loan to Mrs. J. O. Tremblay, \$25. January 16, 1890, paid to government \$76. Deposited a

draft of \$54.89; January 8, 1894, in reference to Coloza and Blair, costs of lawyers \$44; Robitaille & Roy. In regard to the Permanent Construction company of Quebec, when I went to the building society to look up the records and find out how much money Cloutier had received from the society, the last item was February, in his book it was marked January, the book that I took notes of and when I went to ascertain whether it was correct or not I found one more payment in the books of the society than there is entered in his book. The next item in his book was marked "Interest on \$829.89 at six per cent. for the term of ten years and a half.

Q. What was the amount?

359 A. \$829.89, that is correct.

Q. You are wrong about that; it is \$522.61, is it not?

A. Yes, that is right \$522.61. The next item is "Premiums on life insurance and interest on same \$1002.85." The next item is dated June 9, 1891, loan to H. A. Tremblay \$31.40; there is a note beside that here, I remember I took it as interest \$11.40; the note was \$20., interest \$11.40, making a total of \$31.40. I then took some other notes. As I never had seen the insurance policy issued on my father's life I asked to see it and he brought it to me and I wanted to read it, but he took it away and says: "Wait a little while," and afterwards I said: "Mr. Cloutier, allow me to see the number of that policy, any way, if I can not read it," and he said "Yes." He presented it to me and I read the number I took here, 149,296. That was the number of the policy and it was the only thing I could act by so as to make a description of the policy when it was assigned to me; that was all the privilege allowed to me that day. After I got through taking notes I asked Mr. Cloutier whether I could read the contracts, the notarial acts, which are as mentioned in my itemized bill, and he said "Yes I will do so, I will show them to you." So I began to read the contracts and I read three of them in succession. They were as he said nearly alike, and when I reached the fourth one for \$310., and I found a clause where it was said that it was in settlement of all previous accounts and so I called his attention to that and his answer to that was that no payment was ever made, and I says "That is what is written and we are looking for writing here and that is what I am relying on." He says "All right, if that is so I will have to see my notary."

Q. Did he say what he would do about that?

A. Yes, he said he would see his notary, and I said I wished he would see his notary and let me know tomorrow what you
360 understand by these contracts, I says "You see it makes quite a difference."

Q. Whether or not this \$310 contract was previous in date to the \$479 contract which has been in evidence?

A. The last one before that \$479 contract.

Q. Before that one?

A. Yes, the last one before it that I know of. The next thing that took place after we got through with that matter of the contract, he told me he would see his notary and let me know what he found out. I then said to him that there was one item in the account that was missing, he says "What is it?" I says "The item in reference

to the house. My father sent me here to make a settlement of his accounts, and especially of that item, that he wants you to give him a receipt for the amount that is coming to him as a surplus of what you paid, as by agreement made at the time you bought the house," and I so told him what my father told me; that it was understood that the money would be held by him as security for the premiums he might pay upon the insurance.

Q. What money did you refer to?

A. The surplus on the sale of the house. Cloutier bought the house from my father and paid for it the sum of \$967 and a few cents that was due at the building society of Quebec.

Q. He paid that money to the society to square off their debt?

A. Yes, and the understanding at the time of the sale, was, I can remember, that the house should not be sold for less than \$1200 and the surplus between \$967 and \$1200 would be credited to my father.

Q. Did you talk that over with Mr. Cloutier?

A. Yes sir.

Q. What did he say about it?

361 A. He says "I understand, but I ran some risk and ought to keep that money." I says "No sir, that is not fair and you know you promised. I know you can produce an itemized account here and I do not know the items, but this item I know as well as you do. I know that my father gave orders to sell the house, I saw the contract and the power of attorney going to the building society to sell the house. When it came to my father," I says, "it was accompanied by a letter that if he would sign that contract you would allow him the surplus of the sale when you sold it;" and I said "Today I don't want that money, but I want a receipt for it because you sold it for more than \$967." He says "Yes, I sold it for \$1200 certainly," and I said "Give me a receipt for it, my father wants it; you have refused to give him a settlement of accounts for months and I want to give him that satisfaction before he dies. He tells me he has no hope of recovery and if it will be any satisfaction to him I am going to see to that for him." He says "Your father is not dead"; I says "No, and before he dies he wants to be sure of that and you are going to give a correct account; and furthermore, you won't refuse that or after he is dead I will spend any money to make you give an honest account. Until this I have spoken very quietly trying to find out some evidence in this case because I didn't know anything; now I know all I can know from you and I will tell you what I am going to do; if before my father's death you don't give him the satisfaction of knowing how he stands, and don't give an itemized account with credit given to him for what he has paid, after his death I will see that you do." He said a few words, I don't remember very well what, for I was getting excited some, and we were both excited, and we parted that way.

Q. Did you have any further talk with him?

362 A. I met him in the street after my father's death.

Q. Did it have anything to do with the matter of the account?

A. There was something that was said, whether I can remember very well I don't know.

Q. You spoke of a letter which you saw and which you told Mr. Cloutier had accompanied the power of attorney which he sent on for your father to sign; did you see such a letter?

A. I saw the letter, I didn't mean from Mr. Cloutier, it was written by Mr. Gaborier I think, but it was somebody acting for Mr. Cloutier.

Q. Purporting to act for Mr. Cloutier?

A. Yes sir.

Q. Have you the letter in your possession?

A. No, my father had it, and I don't know where it is; he may have destroyed it.

Q. Do you know to whom Mr. Cloutier sold the house?

A. Yes sir.

Q. To whom?

A. To William Boily he told me, I never saw the contracts.

Q. Referring to this account that was given to your brother, where the item of \$44 appears and it mentions several names, Coloza and Blair and Robitaille and Roy, did that have anything to do with the house or was anything said about the matter in your conversation with Mr. Cloutier?

A. All I know about that is that I asked him what was that item and he said costs made in regard to the house; after he bought it. I can not remember exactly, but in regard to the house.

Q. He said it was cost made in regard to house?

A. Yes, but it was after he bought, something that happened afterwards, I don't know what it is.

363 Cross-examination:

Q. I show you "Deft. Ex. 15," the notice in the Cloutier suit in Quebec; was that sent to you by your mother?

A. I believe it is one; she sent me one anyway.

Q. In April, 1901?

A. I can not remember whether it was April or not.

Q. When was it as far as you know?

A. As far as I can remember it was before the trial of Cloutier against the Company in Quebec.

Q. It was before the trial?

A. Yes sir.

Q. It is dated the 25th of April, 1901; how long after that do you think you received it?

A. I think I took notice of the trial a couple of days; my sister was in Quebec and telegraphed me and that was the time I received the notice.

Q. Didn't your mother mail this to you in April?

A. I couldn't remember whether it was April, I couldn't say yes or no; I don't remember.

Q. Why didn't you appear at the trial?

A. Because I thought they had no jurisdiction in Canada over me and I thought I had no business there.

Q. You knew the trial was coming?

A. Yes sir.

Q. And you didn't go because you thought the Canada court has no jurisdiction over you?

A. Because I had no business there; I had no business with Cloutier anyway I thought.

Statement of P. F. Tremblay, marked "Plff. Ex. I," put in evidence by counsel for plaintiff.

By agreement of parties this case is reported to the law court upon so much of the foregoing evidence as is competent and legally
364 admissible. If the law court is of opinion that the action is maintainable it shall render such judgment as the rights of the parties require.

A. R. SAVAGE,
Justice Presiding.

A true copy.

Attest:

I. W. HANSON, *Clerk.*

A true copy.

Attest:

F. X. BELLEAU, *Clerk.*

[EXHIBIT No. 1.]

(Translation.)

CHICOUTIMI, September 26, 1888.

J. B. Cloutier, Esquire, Quebec.

SIR: May I be allowed to come once more to ask you to be kind enough to do me the great service of lending me another one hundred and twenty-five dollars under the same conditions as the one hundred and twenty-five which I have already had—that is with a trade concerning the government, and at two dollars a month for revenue until payment, and out of the amount keep ten dollars on account for the interest. You will receive about the twentieth of October in payment on the first one hundred and twenty-five dollars, about thirty dollars on commission of the money collected this month. I have upwards of two hundred dollars that I will send the first part of October. I say that I will send because Mr. Tremblay is on an exploration in the woods with his son.

365 I hope sir, that you will not refuse me this favor as we absolutely need it. If you cannot get the money for me, a note from you will settle the affaire. An immediate reply, if you please.

I am with respect

Your humble servant,

ARTH. D. TREMBLAY.

If the agreement is not satisfactory to you, make it so and I will sign it. If it is best for me to go to Quebec, tell me so and I will go next Wednesday.

Yours &

A. D. TREMBLAY.

[EXHIBIT No. 2.]

CHICOUTIMI, *October 3, 1888.*

Hon. C. T. C., Quebec.

HONORABLE SIR: I send to Mr. J. B. Cloutier of Quebec, a draft of one hundred and twenty-five dollars payable on the Government with the money of the commission as soon as it will come due, after reimbursement of that already accepted by you.

Please be kind enough to accept it in order to do us a service. I hope to repay him this amount before that time; we give him that for surety.

Please do not refuse us this favor.

Your very humble servant,

(Signed)

"ARTH. D. TREMBLAY."

"J. O. TREMBLAY."

Copy conformable to the original in the hands of the Department.
Dept. of the Lands and Forests.

Quebec, April 9, 1908.

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[EXHIBIT No. 3.]

The year one thousand eight hundred and eighty-nine, the nineteenth day of the month of August.

At the requisition of Mr. Jean Baptiste Cloutier, of the City of Quebec, Professor at the Laval Normal School.

I, Paul Emile Duval, Notary Public for the Province of Quebec, residing at Quebec, have gone to the office of the Permanent Construction Company (Society) of Quebec, where speaking to Alphonse Cote, Treasurer, J. G. Gourdeau, Esquire, Secretary of the said Company, I have signified to the said Company, a transfer consented (to) in favor of the applicant by Jean Ovide Tremblay, of Chicoutimi, Esquire, Surveyor and Agent of the Crown Lands, before me the sixteenth of the present August under the No. 1384 of my minutes.

And I have left a copy of the said transfer with a copy of the presents with the said Construction Company (Society).

Made and signified at Quebec, under the number thirteen hundred eighty-six of my minutes. In witness whereof I have signed at Quebec, reading having been made.

(Signed)

"P. E. DUVAL, N. P."

True copy of the minute remaining in my office. Two—

Ten words erased.

(Signed)

P. E. DUVAL.

[EXHIBIT No. 4.]

\$100.

QUEBEC, *Feb'y* 13, 1890.

On the 31st day of April next I promise to pay to the order of J. B. Cloutier at the office of the National Bank the sum of One Hundred Dollars for value received.

T 4353.

(Signed)

H. A. TREMBLAY.

No. —. Due May 3, '90.

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[EXHIBIT No. 5.]

QUEBEC, 27 Nov., 1891.

Upon demand pay to the order of the Permanent Construction Company (Society) Twenty-five Dollars for value received and charged to the account of A. M. J. B. Cloutier, Quebec.

J. O. TREMBLAY,

By ARTH. D. TREMBLAY.

[EXHIBIT No. 6.]

CANADA,

Province of Quebec, District of Quebec:

Superior Court.

JEAN-BAPTISTE CLOUTIER, of the City of Quebec, Late Professor and Gentleman, Plaintiff,

vs.

JEAN OVIDE TREMBLAY, of the Town of Chicoutimi, Surveyor, & P. COLOZA, of the Town of Chicoutimi, & al., Tiers-saisis.

[L. S.]

Jean-Baptiste Cloutier, of the City of Quebec, late professor and gentleman, being duly sworn deposes and says:

That Jean-Baptiste Tremblay of the town of Chicoutimi, surveyor, is personally indebted towards him to the amount of Five Hundred and Forty-one Dollars, current, for the following causes and reasons; viz: to the said sum of five hundred and forty-one dollars for equal amount of money loaned and advanced by him, said Jean-Baptiste Cloutier, to the said Jean Ovide Tremblay in the city of Quebec on or about the sixteenth day of August One Thousand Eight Hundred and Eighty-nine, and recognized by the said Jean Ovide Tremblay, by an Act of Obligation, consented to by the said Jean Ovide Tremblay, in his favor of the Sixteenth of August, One Thousand Eight Hundred and Eighty-nine, and which will be produced to support these presents,

That the said Deponent is informed in a sure and creditable manner, has all reason to believe, firmly and consciously his goods, debts and effects with the intention to defraud his creditors in general and the said deponent in particular, and the said Deponent believes furthermore, and firmly believes, that without the benefit of an order of saisie arret before judgment of the goods, debts and effects of the said Jean Ovide Tremblay into the hands of P. Coloze, of the town of Chicoutimi, and of the Societe de Construction Permanente de Quebec, political and incorporate body having its principal establishment in the City of Quebec, Tiers-saisis, the said Deponent will lose his debt and sustain damage and the said defendant has signed.

(Signed)

J. B. CLOUTIER.

Sworn to before me at Quebec this 14th day of Sept., 1891.

(Signed)

P. MALOIN, D. P. S. C.

True Copy.

ALPH. BOISSONNEAULT,

Dep. P. S. P.

This is a translation of the annexed French document.

ALPHONSE REED.

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[EXHIBIT No. 7.]

Solid Progress.

| During the Past 10 Years. | | M. G. Bulkeley, President. |
|---------------------------|----------------|--------------------------------|
| 1866..... | \$2,036,823.05 | J. C. Webster, Vice-President. |
| 1871..... | 15,061,529.12 | J. L. English, Secretary. |
| 1876..... | 22,092,734.32 | H. W. St. John, Actuary. |
| 1881..... | 26,403,440.68 | |
| 1885..... | 29,771,230.04 | |

Ætna Life Insurance Company.

Incorporated 1820. Commenced Business in Canada in 1850.

Eastern Canada Branch Office, Opposite the Post Office.

T. H. Christmas, Manager.

MONTREAL, Feb. 10th, 1886.

Jos. Grondin, Esq., Quebec, Que.

DEAR SIR: Your favor of the 9th inst. is received, to which I hasten to reply.

Assignment of policy No. 149,296 Tremblay to the Permanent Building Society of Quebec was received safely & the same has been forwarded to the Company to be filed with the original application, for attention to the proper time.

You will of course explain to those interested that the Company does not assume responsibility of Assignments, although we recommend our insured to act in matters of this nature to the best of our information.

Yours truly,

T. H. CHRISTMAS, *Manager.*

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Form for Assignment to a Creditor.

To be Attached to the Policy Numbered 149,296, Issued by The Ætna Life Insurance Company of Hartford, Conn.

For Value Received I hereby transfer, assign, and turn over unto the Quebec Permanent Building Society of Quebec as collateral, all my right, title, and interest in Policy of Life Insurance No. 149,296 issued by the Ætna Life Insurance Company, of Hartford, Conn., and all benefit and advantage to be derived therefrom, to the extent of such interest as he may have when said Policy becomes a claim.

Dated at Chicoutimi this 22d day of September, 1885.

J. O. TREMBLAY.

[L. s.]

ARTHEMISE D. TREMBLAY

[L. s.]

Witness:-

PHILIPPE LAVOIE.

HENRI A. TREMBLAY.

PROV. OF QUEBEC,

County of Chicoutimi, ss:

On this 22 day of September, 1885, before me, the undersigned, appeared J. O. Tremblay of Chicoutimi, personally known to me, and duly acknowledged the execution of the above instrument.

Two words erased null.

[L. s.]

O. B. KEMP, *Comm'r.*

N. B.—A duplicate of this Assignment should be forwarded to the Home Office of the Company, and with the same should be sent a certificate from proper authority, showing that the person before whom the acknowledgment is made is duly authorized to administer oaths.

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[EXHIBIT No. 8.]

(Translation.)

Before the Public Attorney, residing at Quebec, undersigned.

Is present: Mrs. Arthemisa Dumais, now at Quebec, and living in the City of Chicoutimi, County of the same name, acting here as special mandatory of her husband, Jean Ovide Tremblay, Esquire, surveyor, also living at Chicoutimi, according to warrant under private seal dated at Chicoutimi the sixteenth of the present month and annexed to the present letters.

Who, in her position, admits and confesses to have borrowed and to owe legally to Jean Baptiste Cloutier, Esquire, professor, living in the City of Quebec at the present time and receiving the sum of two hundred and ninety-four dollars capital and interest, for as much as the said Jean Baptiste Cloutier, has loaned to her and actually delivered in current money before the execution of the present letters, as the debtor admits and declares herself satisfied by it.

Which sum the said Mrs. Arthemise Dumais by virtue of her position, promises and binds herself for the said debtor, his inheritors and assigns, to pay to the said Jean Baptiste Cloutier or order, bearer of the present letters in good current money, from today to the first of January of the year 1889, by the sum of twenty-five dollars a month, payable on the first of next February (1888) and to this continue the first of the subsequent months, until the complete and entire payment of the said sum of two hundred and ninety-four dollars.

Which said sum, capital and interest will thus be payable and returnable through the Company of Permanent Construction of Quebec here represented by Augustin Gagowry, Esquire, president and Alphonse Cote, Esquire, its Treasurer, both of the City of
372 Quebec, out of the moneys drawn as below stipulated and paid by the said Company of the said Jean Baptiste Cloutier, out of the balance of the salary which comes to the said J. O. Tremblay after the payment of the monthly deposits that he has and will have to pay to the said Company according to the deeds existent this day between the company and the said J. O. Tremblay.

Which said president and treasurer of this society promise and bind themselves in their respective positions, to pay and return on and out of the salary which it must draw from the government by virtue of a transport by Jean Ovide Tremblay, the said debtor, in behalf of the said Company and duly signified to the Government of the Province of Quebec, to the said Jean Baptiste Cloutier, or order, by the sum of twenty-five dollars a month, such as is mentioned above, the said sum of two hundred and ninety-four dollars.

The Company is willing and binds itself to pay, in case of the death of the said debtor, to the said Jean Baptiste Cloutier, or order, the sum of three hundred dollars to be taken from and out of the interest which it will receive from the Insurance Company "Ætna" on the life of the debtor, by virtue of the policy, number 149,296, dated at Hartford, Connecticut, United States of America, on the thirteenth of August, 1885 to the amount of two thousand dollars, which policy is to-day the property of the said company, being understood that the said company is not bound to the payment of the premiums of the said insurance.

The said company making the above payments at the consent of the said J. O. Tremblay, represented in the present letters by his wife Arthemisia Dumais.

Being well understood that the case happening or the said J. O. Tremblay should cease being the debtor of the said Company,
373 this last should warn the said J. Bte. Cloutier, who will have in this case to see himself to the entire payment of the insurance premium. And also the said Company as long as it will

maintain its interests in the said insurance policy, in the case of default on the part of the said J. O. Tremblay to pay the insurance premiums, the said company and the said J. Bte. Cloutier, will pay pro rata their credits. The said debtor by virtue of her position, promises to comply exactly with the warrant annexed to the present letters, a certified copy of which will have to be given by the Attorney undersigned, in case of need, at the application of the parties of one of the interested parties.

The payments will be made at the bureau of the said company of Permanent Construction of Quebec, at Quebec, and for the execution of the present letters, the parties choose an abode in their present and respective dwellings.

The deed of which, Made and passed at Quebec in the office of Attorney Arthur Tremblay, the said Attorney, the year 1887, the sixteenth day of April, under the number seventy-five.

And have signed after the reading.

(Signed)

"J. O. TREMBLAY,
By ARTH. D. TREMBLAY."
"J. B. CLOUTIER."
"A. GABOWRY."
"ALP. COTE."
"ARTH. TREMBLAY, N. P."

True copy of the minute remaining on record in my office. A proper adjournment.

ARTH. TREMBLAY, N. P.

I, the undersigned, Jean Ovide Tremblay, surveyor and agent of the Crown Lands living at Chicoutimi, County of the same
374 name, authorized by these present letters, my wife Arthemisia Dumais, to borrow in my name, the sum of two hundred and fifty dollars repayable on my salary at the terms and conditions that she will determine at the borrowing and this, to receive on my salary as agent of the Crown Lands and Woods, for the agency of Lake St. John, East Division, for which I authorize her to give an order, and have accepted by the Company of Permanent Construction of Quebec, assignee of my said salary, by virtue of a notarial transport which I authorized equally to accept in this way and execute the said reimbursement for me and in my name out of my aforesaid salary.

And the case happening in which the transport which has been spoken of above in behalf of the said company will no longer have any reason to exist by the reimbursement to the said company or otherwise. I authorize by these same present letters the Department of the Crown Lands at Quebec in the person of Mr. E. E. Tache, or his successor in office, the assistant commissary, to pay and return at the terms and conditions which my said wife will stipulate, the pretor of the above amount and its interest and fair charges. (x)

(x) If there is any cause.

Made at Chicoutimi, this sixteenth day of April 1887.

(Signed)

"J. O. TREMBLAY."

A true copy of the original remaining annexed to the minute on record in my office.

ARTH. TREMBLAY, N. P.

[EXHIBIT No. 9.]

(*Translation.*)

I, the undersigned, authorize the notary, Arthur Tremblay,
375 of Quebec, to draw from Mr. Cloutier, the money which I
borrow this day.

ARTH. D. TREMBLAY.

Quebec, 6 April, '87.

Received of J. B. Cloutier, Esq., a check for the amount of two hundred and fifty piasters (dollars?) in virtue of procuration on the other side.

A. TREMBLAY, N. P.

Quebec, 19 April, 1887.

[EXHIBIT No. 10.]

(*Translation.*)

The year 1887, the twenty-first day of May.

In the presence of Arthur Tremblay, Public Attorney, residing and practising in the City of Quebec, undersigned.

Has appeared Jean Ovide Tremblay, Esquire, surveyor and agent now at Quebec, and residing in the city of Chicoutimi in the county of the same name,

Who says and declares what follows

1°. That the sixteenth of last April, Mrs. Arthemise Dumais his wife, acting then as mandatory of the appearer, by virtue of a warrant under private seal dated at Chicoutimi, the sixteenth of last April, has contracted a loan of two hundred and ninety-four dollars in capital and interest, from Jean Baptiste Cloutier, of Quebec, Esquire, professor.

That for security of the reimbursement of the said sum, his said wife, by virtue of her position, has transferred the sum of twenty-five dollars a month payable every month beginning the first of next February (1888) and to be taken out of the salary that the appearer draws and shall draw from the Government of the Province
376 of Quebec as agent of the Crown Lands and Woods for the
agency of Lake St. John, East division and this up to the
complete and entire payment of the said sum of two hundred and
ninety-four dollars.

That as collateral security the company of Permanent Construction of Quebec, represented in the said act of obligation by Augustin Gabowry, its President, and Alphonse Cote, its treasurer, has bound

itself to pay, with the consent of the said Mrs. Tremblay, by virtue of her position, to the said Jean Baptiste Cloutier or order, the sum of three hundred dollars in case of the death of the said J. O. Tremblay, the appearer, to be taken, out of and from the money which it (the said company) will be able to receive from the Insurance Company "Ætna," by virtue of an insurance policy of two thousand dollars, on the life of the appearer, dated at Hartford, Connecticut, United States of America, the thirteenth of August, 1885, and bearing the number 149,296 (one hundred forty nine thousand two hundred ninety-six) which Insurance policy is now the property of the said company by virtue of a transport in its favor by the appearer J. O. Tremblay.

2°. That the seventeenth of the present May, the said Mrs. Arthemise Dumais, acting still as mandatory of her said husband, the appearer, according to warrant dated at Chicoutimi, the eleventh of May has contracted a new loan from the same Mr. Jean Baptiste Cloutier, to the amount of two hundred and forty dollars capital and interest payable and returnable by the said company of Permanent Construction of Quebec, assignee of the said salary as aforesaid, out of and from the same salary of the appearer, as agent of the Crown Lands and Woods as aforesaid, as follows: forty dollars the first of next Décembre, forty dollars the first of January also next (1888)

and a sum of ten dollars a month payable the first of each
377 month beginning the first of next February inclusively to the first of February 1889, inclusively (that is during eleven months at ten dollars a month). And as to the balance of fifty dollars, it will be payable in two equal payments of twenty-five dollars each, the first of which will be made the first of February, and the other the first of March the year 1889;

That the appearer has authorized the said Company of Permanent Construction to execute these reimbursements in the same manner as those of the obligation of the sixteenth of last April aforesaid;

That, also, in virtue of the collateral security, the said Mrs. Tremblay has transferred another sum of three hundred dollars to the said Jean Baptiste Cloutier, to be taken in case of the death of the said J. O. Tremblay out of and from the money which the said company of Permanent Construction of Quebec, assignee of the policy as aforesaid, will draw from the said Insurance Company "Ætna" by virtue of the said appearer, bearing the number 149,296.

The appearer declares that out of the said transports of insurance on his life to the collective sums of six hundred dollars, the said J. B. Cloutier will be able to retain only the balance which will be due to him by virtue of the two obligations and transports above mentioned and will have to deliver the balance to the inheritors and assigns of the said J. O. Tremblay which is accepted by the said J. B. Cloutier for this special letter.

Declares, besides, the appearer that the case happening that the said company should give up all interestedness in the transport of the salary which has been made and which has been spoken of above, that he ratifies and confirms the transport which has been made by

his said wife, in behalf of the said J. B. Cloutier, on the Government of the Province of Quebec.

Besides he has bound himself and does bind himself, by
378 the present letters, in the event of the case where he should accept another position in substitution to that as agent of the Crown Lands and Woods which he occupies today, to transfer his salary in order to execute the reimbursements of the two said sums of money due to Jean Baptiste Cloutier in the same way as it has been agreed upon as to his real salary.—

Finally, the said appearer J. O. Tremblay, declares that he will ratify and confirm in all their contents the said acts of obligation and transport which has been read to the said J. O. Tremblay by the undersigned Attorney, at the same time as the present letters, which have been consented to by his said wife in behalf of the said Jean Baptiste Cloutier, by an act before the undersigned Attorney on the respective dates above mentioned and especially that he ratifies and confirms the said transports of salary, and of his said insurance policy, as well as the said authorizations, and wishes and intends that they will have and that the whole have force and effect in the same way as if he had signed them himself.

The deed of which at Quebec the day, month and year, written ahead, and on record at the office of the undersigned attorney under the No. ninety-five of its minutes.

And after the reading the appearer has signed as well as the said J. B. Cloutier with me, undersigned Attorney.

(Signed)

"J. O. TREMBLAY."

"J. B. CLOUTIER."

"ARTH. TREMBLAY, N. P."

True copy of the minute remaining on record in my office.

ARTH. TREMBLAY, N. P.

[EXHIBIT No. 11.]

The year one thousand eight hundred eighty-seven, the
379 eighteenth day of May at the requisition of Jean Baptiste Cloutier, Esquire, professor—living at Quebec, the creditor and grantee named and qualified in a certain deed (document) of obligation and of transfer, made and consented (to) in his favor, by Lady Arthimise Dumais, in her capacity of proxy of her husband, Jean Ovide Tremblay, Esquire, Surveyor, living in the town of Chicoutimi, county of the same name—following deed (document) passed before Mtre Arthur Tremblay—notary, on date at Quebec, of yesterday (the seventeenth of the present May).

He, notary public, residing and practicing in Quebec, undersigned, have purposely gone to the office of the Permanent Construction Company (Society) of Quebec, the debtor, named and qualified in the said deed (document) of Obligation and Transfer, situated in Quebec street St. John—where being and speaking to Mr. Alphonse Cote, the treasurer of the said company we have in the name of the

said applicant signified the said deed (document) of Obligation and Transfer, to the said company—calling upon and requiring it to take cognizance of it and to pay to the said Jean Baptiste Cloutier, or order, the sum of two hundred and forty piasters (dollars), transferred to him by the said obligation and transfer deed (document), with interest upon it, upon the terms and in the manner therein mentioned, upon penalty of paying the said sum twice, and all costs, expenses, damages, protesting from this time against the said Permanent Construction Company (Society) of Quebec in case of refusal or negligence on its part, for such costs, expenses, damages and in everything which can and ought to be protested in such a case.

Of which Document

Made and signified at Quebec—the days and year written at first—under the number ninety-two of the minutes of Mtre Arthur

380 Tremblay, the notary undersigned, at the office of the debtor—where we have left authentic copy of the presents as well as authentic copy of the said deed of obligation and of transfer to the said Alphonse Cote — in order that he may not pretend cause for ignorance.

And, I have signed, reading having been made.

(Signed)

“ARTH. TREMBLAY, N. P.”

True copy of the minute on record in my Office—forty-two words erased.

ARTH. TREMBLAY, N. P.

[EXHIBIT No. 12.]

(Translation.)

THE YEAR 1887, May 26th.

Before Louis Philip Sirois, Public Attorney for the Province of Quebec, practising at Quebec,

Has appeared Jean Ovide Tremblay, of the city of Chicoutimi, Esquire, Surveyor and Agent of the Lands of the Crown,

Who has confessed to owe Mr. Jean Baptiste Cloutier, of the city of Quebec, Professor of the Laval Normal School, at this present time and receiving the sum of sixty dollars for a loan of an equal sum made to him this day.

The said Mr. Tremblay promises to the said Mr. Cloutier to repay him this said sum as follows. twenty-five dollars in the month of May 1889, twenty-five dollars in the month of June of the same year and ten dollars in the month of July of the same year, without interest to the expiration, but with interest of ten per cent. if the payments are not made at the expiration.

In order to affirm the repayment of this said sum the said J. O.

381 Tremblay transfers to the said Mr. Cloutier the same sum of sixty dollars payable at the aforesaid times on the salary which he receives from the Department of the Crown Lands as agent of the Lands of the Division of Chicoutimi, which said sum will be paid at the aforesaid times by the Company of Permanent

Construction of Quebec if it receives still at that time the salary of the said J. O. Tremblay, as it does at this very time, or by the Department of the Lands of the Crown if the said Company of Construction does not receive this salary then.

And in the case of the death of the said debtor the said Company of Construction will have to pay out of amount which it will receive in payment of the assurance policies on the life of J. O. Tremblay which will have already been transferred, the said sum of sixty dollars.

And if the said Company should happen to return to him the said assurance policies the said J. O. Tremblay promises to transfer them to the said Mr. Cloutier at his first request.

It is agreed also that if the said J. O. Tremblay should happen to change position, he will have to give to the said Mr. Cloutier at his first request a draft on the new salary attached to this new position, for a sum equal to that which will then be due to the said Mr. Cloutier as much by virtue of the present letters as by virtue of any other transaction anterior to this one.

Made at Quebec under the number 3515 of the minutes of the said L. P. Sirois.

In testimony whereof the said parties have signed with the said Attorney after reading.

(Signed)

"J. O. TREMBLAY."

"J. B. CLOUTIER."

"L. P. SIROIS, N. P."

True copy of the minute remaining on record in my office.

L. P. SIROIS.

382

[EXHIBIT No. 13.]

The year one thousand eight hundred eighty-seven, the twenty seventh day of May.

At the requisition of Mr. Jean Baptiste Cloutier, of the City of Quebec, Professor at the Laval Normal School of Quebec.

I, Louis Philippe Sirois, Notary Public for the Province of Quebec, practicing at Quebec, have gone to the office of the Permanent Construction Company (Society) of Quebec, where speaking to J. G. Gourdeau, Esquire, Secretary of the said Company (Society), I have signified to the said Company a transfer consented (to) in favor of the applicant by Jean Ovide Tremblay, of Chicoutimi, Esquire, Surveyor and Agent of the Crown Lands, before me this twenty-sixth of the present May under the No. 3575 of my minutes.

And I have left a copy of the said transfer with a copy of the presents with the said Construction Company.

Made and signified at Quebec under the number three thousand five hundred eighteen of my minutes. In witness whereof I have signed at Quebec, a reading having been made.

(Signed)

"L. P. SIROIS, N. P."

True copy of the minute remaining on record in my office.

L. P. SIROIS.

[EXHIBIT No. 14.]

(Translation.)

THE YEAR 1887, 24th of September.

Before Louis Philip Sirois, Public Attorney for the Province of Quebec, practising at Quebec,

Has appeared Mrs. Arthemise Dumais, of the city of Chicoutimi, wife of Jean Ovide Tremblay, Esquire, land-surveyor in the same city, acting in the present letter as agent for the aforesaid Jean Ovide Tremblay by whom she promised to have ratified the present letters without any delay following the notarial transaction.

Who has confessed to owe Jean Baptiste Cloutier of the city of Quebec, Esquire, professor at the Laval Normal School, at this present time and receiving the sum of three hundred and ten dollars for the loan of an equal sum made by the said J. B. Cloutier to the said J. O. Tremblay before the execution of the present letters.

The said J. O. Tremblay will have to pay this said sum of three hundred and ten dollars in thirteen monthly payments, the first twelve of which will be of twenty-five dollars, and the last of ten dollars, without interest until expiration, but with interest at the rate of eight per cent. a year on the payments which are not made at their expiration. The first payment will be made the first of the month which follows that one in which the said J. B. Cloutier shall have been paid completely the amount owed him by the said J. O. Tremblay by virtue of the bond received by A. Tremblay, Attorney, the sixteenth of April 1887, that is to say the first of February 1889, and the other payments will be made the first of each following month without interruption.

In order to affirm the repayment of this said sum, the said Mrs. Tremblay transfers to the said Mr. Cloutier the same sum of three hundred and ten dollars, payable on the aforesaid dates on the salary which the said J. O. Tremblay receives from Department of the Crown Lands as agent of the lands of the division of Chicoutimi, which sum will be paid on the aforesaid dates by the Company of Permanent Construction of Quebec, if it receives still at that time the salary of the said J. O. Tremblay as it does at this time by the Department of the Crown Lands the said party does not draw this salary then.

384 And in the case of the death of the said debtor, before the payment of this said sum, the said Society of Construction will have to pay out of the sums that it will receive in payment for the insurance policies on the life of the said J. O. Tremblay, which have already been transferred to it, the said sum of three hundred and ten dollars, to the said J. B. Cloutier which will be subrogated in the claims resulting from the insurance policies to the amount of the sum of three hundred and ten dollars. And if the said Company should happen to return the said insurance policies to him the aforesaid J. O. Tremblay will have to transfer them to the said Mr. Cloutier at his first request.

It is agreed that if the said J. O. Tremblay should happen to change position he will have to give the said Mr. Cloutier, at his first request, a draft about the new salary connected with this new position for a sum equal to that which will be due then to the said Mr. Cloutier as much by virtue of the present letter as by any other title anterior to this.

All the payments will be made to the bureau of the said Company of Permanent Construction of Quebec as long as the latter receives the salary of the said J. O. Tremblay or to the bureau of the Crown Lands in the contrary case.

It is agreed between the said parties that the two bonds consented to by the said J. O. Tremblay in behalf of the said J. B. Cloutier, one of which was dated on the 17th of last May before A. Tremblay, Attorney, and the other dated on the 26th of last May before the undersigned attorney, are by the present letter cancelled and annulled, and will be considered at all conclusions as having never existed but this cancelling will be invoked in so far as the said J. O. Tremblay will have ratified the present letter through notarial transaction.

385 Made at Quebec under the number 3614 of the minutes of the said L. P. Sirois. In testimony whereof the said parties have signed with the said notary after the reading.

(Signed)

"ARTH. D. TREMBLAY."

"J. B. CLOUTIER."

"L. P. SIROIS, N. P."

True copy of the minute remaining on record in my office.

L. P. SIROIS.

[EXHIBIT No. 15.]

THE YEAR 1887, *the 31st December.*

Before Thomas Z. Cloutier, undersigned Notary Public for the Province of Quebec, practising and residing in the town of Chicoutimi.

Appeared Jean Ovide Tremblay, of the said town of Chicoutimi, Esquire, surveyor and agent of Crown Lands.

Who, after having taken communication of an Act of obligation and transfer, received at Quebec by L. P. Sirois, Notary, the 24th of September last, and consented to by Dame Arthemise Dumais, his wife, acting as his mandatory, in favor of Jean Baptiste Cloutier, of Quebec, ratify and approve the aforesaid act of obligation and transfer, and wishes it to be executed and have its full effect in the same manner, that it would have had he signed it himself, renouncing to the faculty of taking advantage of any default of authorization given to his said wife.

Done at Chicoutimi, under No. 4944 of the minutes of the undersigned Notary.

And the said appearer signed with the said Notary, after reading.

(Signed)

J. O. TREMBLAY.

TH'S Z. CLOUTIER, N. P.

386 For a true copy of the minutes remaining on record in the office of the late Thomas Z. Cloutier, during his lifetime, Notary Public for the aforesaid Province of Quebec, residing at Chicoutimi, in the district of Chicoutimi, approved and verified by us undersigned, George St. Pierre, Notary Public for the Prov. of Quebec, living in the town of Chicoutimi, depositor of the minutes, repertory and index of the said late Ths. Z. Cloutier, by virtue of an Order in Council of his Hon. the Lt. Governor of the Province of Quebec, under the date of the 2nd Dec. 1905, at Chicoutimi, aforesaid, this 2nd day of April 1908,

Two words erased null.

GEO. ST. PIERRE, *N. P.*

This is a translation of the annexed French document.

ALPHONSE REED.

[EXHIBIT No. 16.]

The year eighteen hundred eighty-eight, the nineteenth day of January,

At the application of Jean Baptiste Cloutier of the city of Quebec, Esquire, Professor at the Laval Normal School,

I, Louis Philippe Sirois, Public Attorney for the Province of Quebec, practising at Quebec, went to the bureau of the Company of Permanent Construction of Quebec, where speaking to Godfroid Gourdeau, Secretary of the aforesaid Company, I have signified to the aforesaid Company: 1st—a bond consented to before me the twenty-fourth of last September under the No. 3614 of my minutes by Madame J. O. Tremblay, acting for her husband, in behalf of the plaintiff; 2nd—a ratification of the aforesaid bond by the aforesaid J. O. Tremblay, at date of thirty-first of last December, received by T. Z. Cloutier, Attorney at Chicoutimi under the No. 4944 of his minutes.

387 And I have left to the aforesaid Company of Construction a copy of the aforesaid bond, a copy of the aforesaid ratification as well as a copy of the present letters.

Made and signified at Quebec under the No. three thousand seven hundred one of my minutes. In testimony whereof I have signed after the reading.

(Signed)

“L. P. SIROIS, *N. P.*”

True copy of the minute remaining on record in my office.

L. P. SIROIS, *N. P.*

[EXHIBIT No. 17.]

(Translation.)

QUEBEC, April 16, 1887.

Transport by J. O. Tremblay to J. B. Cloutier for a sum of \$294. Capital and interest payable in eleven payments of \$25, the first of

which will be made the first of February 1888 and one payment of \$19 (the last, Jan. 1, 1889).

QUEBEC, *Sept.* 24, 1887.

Transport for \$310 capital and interest payable in twelve payments of \$25, the first of which will be made the first of February 1889 and one payment of \$10 (last payable Feb. 1, 1890).

QUEBEC, *February* 12, 1890.

Other transport to Mr. J. B. Cloutier payable in 11 installments of \$20, beginning the first of March 1890.

QUEBEC, *March* 27, 1908.

[EXHIBIT No. 18.]

(*Translation.*)

The year 1891, the ninth day of November.

Before Thomas M. W. Pampalon, Public Attorney for 388 the Province of Quebec, residing in the City of Quebec, undersigned.

Were present Augustin Gabowry, Esquire, of the City of Quebec, President of the Company of Permanent Construction of Quebec, and Godefroy Gourdeau, also of Quebec, Secretary of the aforesaid Company.

Who sell to Jean Baptiste Cloutier, Esquire of the City of Quebec, ex-professor of the Laval Normal School of Quebec, present and acceptant.

A piece of ground being the part North-East of East of the lot number sixty-one (61) of the Cadastre for the East Quarter of the City of Chicoutimi, situated to the North of the second street in front containing about two arpents and a third in surface with the house circumstances and appendages, without any guaranty of exact dimensions, such that the whole is actually and engaged by Mr. J. O. Tremblay.

Such that the whole is actually, circumstances and appendages, with the servitudes active and passive, without exception or reserve.

This estate belongs to the aforesaid vendor for having purchased of Jean Ovide Tremblay of the City of Chicoutimi provincial surveyor, by act of sale with right of redemption consented to by the aforesaid vendor, passed before J. A. Charlebois, Attorney, on date at Quebec, on the thirty-first of July eighteen hundred eighty-five; the aforesaid J. O. Tremblay having forfeited the right to exert the power of redemption reserved in his favor in the aforesaid act by virtue of a trial of the Superior Court of the District of Chicoutimi, on the date of October nineteenth, eighteen hundred ninety-one, registered at the registry bureau of the County of Chicoutimi, the twenty-fourth of the same month and the same year under the number 8575.

In order by the purchaser to possess, to sell and dispose
 389 of the estate described before in full and entire property with
 possession to count from this day.

This sale is made at the expense of the purchaser, who binds himself to it.

Of all taxes academic, municipal and others which can be reclaimed on the aforesaid estate with the arrears, the purchaser promising to settle any proclamation whatever which could be made against the property sold before.

This sale is made for and in consideration of the sum of nine hundred and sixty-six dollars and ninety centimes, out of which sum the aforesaid purchaser promises to pay to the Company from to-day to thirty days with interest at ten per cent., two hundred sixty-six dollars and ninety centimes.

As to the balance namely: Seven hundred dollars, the aforesaid J. B. Cloutier promises to pay to the aforesaid Company in the delay of five years, to count from this day, with the interest capitalized beforehand at the rate of six per cent. making a total of nine hundred ten dollars, by payments equal and monthly of fifteen dollars sixteen and two-thirds the third Monday of each month, during the term of sixty consecutive months, the first payment of which will be made the third Monday of December, the parties declaring that by continuation of these monthly payments the interest payable on the aforesaid sum calculated semi-annually, but not in advance is of ten per cent.

In case of payment beforehand the reimbursement will be made conformably to the conditions above stipulated; all payment not paid at expiration bearing interest at ten per cent.

The purchaser promises to hold this property insured to the amount of a thousand dollars in behalf of the aforesaid Company, the receipt of renewal before being transmitted to the bureau of the Company the day before the day of expiration.

390 And in order to assure the payment of the aforesaid sum of nine hundred ten dollars the purchaser mortgages the estate described above on which the vendor reserves all claims and privileges—lenders.

And for the execution of the present letters, the parties choose abodes in their present and respective homes:

The deed of which Made and executed at Quebec Office of the undersigned Attorney, Thomas M. W. Pampalon the day, month and year aforesaid, and on record under the number eight hundred sixty-two of the minutes of the aforesaid Attorney undersigned.

In testimony whereof, after the reading, and at the instant in the presence of each other, the parties and the Attorney have signed.

(Signed)

"J. B. CLOUTIER."

"A. GABOWRY."

"G. GOURDEAU."

"THO. M. W. PAMPALON, N. P."

True copy. One word crossed out is worth nothing.

THOS. M. W. PAMPALON.

[EXHIBIT No. 18a.]

(Translation.)

CANADA,
Province of Quebec,
District of Chicoutimi:

Superior Court, the Nineteenth Day of October, 1891.

Present: The Honorable J. A. Gagne.

No. 178.

THE SOCIETY OF PERMANENT CONSTRUCTION OF QUEBEC, a Corporation Established and Having Its Place of Business in the City of Quebec, Plaintiff,

vs.

JEAN OVIDE TREMBLAY, of the City of Chicoutimi, Provincial Surveyor, Defendant.

The Court having heard the plaintiff, ex parte, examined the papers produced and the confession of judgment also produced and having considered the whole:

Maintains the action in this cause, declares the defendant to have lost his right to exercise the power of redemption reserved in his favor in the act of sale which he consented to for the plaintiff on the 31st day of July, 1885, before J. A. Charlebois, Notary, relative to the north east part of lot Number 61 of the Register for the eastern part of the City of Chicoutimi and declares and adjudges that the plaintiff has become absolute proprietor of the said real estate and appurtenances and that it can dispose of it as seems best with costs in this instance to Messrs. Hamel, Tessier & Tessier, attorneys for the plaintiff.

A true copy.

390½

[EXHIBIT No. 18-b.]

(Translation.)

Registry Office of the Registry Division of the County of Chicoutimi.

I, the undersigned, certify that the following instrument is a true copy of the record made at nine o'clock of the forenoon of October twenty-six, one thousand eight hundred and ninety one, Reg. A, Vol. 13, page two hundred and forty and under number eight thousand five hundred and seventy-five—No. 8575—viz., Canada, Province of Quebec, District of Chicoutimi. Superior Court. The tenth day of October one thousand eight hundred and ninety one. Pres-

ent, The honorable Judge J. A. Gagne. No. 178. La societe de construction permanente de Quebec, body politic and incorporated, established and having its place of business in the city of Quebec, plaintiff, vs. Jean Ovide Tremblay, of the city of Chicoutimi, provincial surveyor, defendant. The Court having heard the plaintiff *ex parte*, examined the documents produced, and the confession for judgment also produced and having considered the whole: maintains the action in this case, declares the defendant to have lost his faculty of redemption reserved in his favor in the deed given by him to the plaintiff the thirty-first day of July one thousand eight hundred and eighty-five, before Mr. J. A. Charlebois Notary, regarding the North East or East part of Number sixty-one on the plans of the East Ward of the City of Chicoutimi and declares and adjudges that the plaintiff has become the owner of said real estate and its dependances and that it may dispose of same as to it it shall seem fit, with the costs of this action allowed Messrs. Hamel, Tessier & Tessier plaintiff's attorneys.

True Copy.

(Signed)

F. X. GOSSELIN, P. C. S.

All of which I certify and attest to be a true copy of the transcribed document. Given at Chicoutimi this twenty-fourth day of the month of August one thousand nine hundred and nine.

THOS. BOSSE, *Registrar*.

Thos. Bosse, Registrar, Chicoutimi, Que.

[EXHIBIT No. 19.]

391

(Translation.)

Before Thomas M. W. Pampalon Public Attorney, for the Province of Quebec, living in the City of Quebec undersigned.

Were present:

Augustin Gabowry, Esquire, of the City of Quebec, president of the Company of Permanent Construction of Quebec;

And Godefroy Gourdeau also of Quebec, Secretary of the aforesaid Company.

Who have by these present letters admitted to have received to the satisfaction of the aforesaid Company, in different payments made before the execution of the present letters, according to those received under private seal, which will be made with these present letters only a same defence of Mr. Jean Baptiste Cloutier of Quebec, ex-professor, the sum of six hundred seventy-eight dollars being the balance of the sum due by him to the aforesaid Company by virtue of an act on date of the ninth day of the month of November one thousand eight hundred and ninety-one and registered at Chicoutimi the eleventh day of the month of November of the same year under the number 8597, together all of the interests fell due on the aforesaid sum to this day and other accessories of which and of the whole the aforesaid Com-

pany leaves and releases the said J. B. Cloutier and all others and gives him by these present letters withdrawal of the mortgages appointed by the aforesaid obligation.

The deed of which made and passed at Quebec the fourth day of the month of May one thousand eight hundred and ninety-two under the number nine hundred fifty-nine, and the aforesaid appearers have signed with me the said Attorney after the reading.

(Signed)

"G. GOURDEAU."

"A. GABOWRY."

"THS. M. W. PAMPALON, N. P."

True copy.

THS. M. W. PAMPALON, N. P.

391½

[EXHIBIT No. 20.]

| DR. | | J. B. Cloutier. | | CR. | |
|---|------------------------|-----------------|----|----------|-------|
| \$700, payable in sixty payments of \$15.16½. | | | | | |
| First payment due 3rd Monday of Dec., 1891. | | | | | |
| 1891. | | | | Fol. | |
| Nov. 9. | To J. O. Tremblay..... | 152 | | \$966.90 | |
| 11. | To Money..... | 10 | | 2. | |
| 13. | To do..... | 11 | | .50 | |
| 13. | To do..... | 10 | | .66 | |
| Feb. 19. | To do..... | 45 | | 3. | |
| Mar. 21. | To interest..... | 165 | | 14. | |
| | | | | | <hr/> |
| | | | | 987.06 | |
| 1891. | | | | Fol. | |
| Dec. 3. | By money..... | 17 | | \$271.63 | |
| 1892. | | | | | |
| Jan. 4. | By do..... | 1 | 27 | 15.17 | |
| Feb. 4. | By do..... | 2 | 39 | 15.16 | |
| Mar. 14. | By do..... | 3 | 53 | 18.17 | |
| Mar. 21. | By balance..... | | | 666.93 | |
| | | | | | <hr/> |
| | | | | 987.06 | |
| 1892. | | | | | |
| Mar. 21. | To balance..... | | | 666.93 | |
| May 4. | To interest..... | | | 41.40 | |
| | | | | | <hr/> |
| | | | | 708.33 | |
| 1892. | | | | | |
| Apr. 8. | By cash..... | 4 | 62 | 15.17 | |
| Apr. 22. | By do..... | 5 | 66 | 15.16 | |
| May 4. | By do..... | 60 | 72 | 678. | |
| | | | | | <hr/> |
| | | | | 708.33 | |

Copied from Ledger "L" of La Societe de Construction Permanente of Quebec and certified to be correct.

LA SOCIETE DE CONSTRUCTION PERMANENTE DE QUEBEC.
ALP. COTE, *Treas.*

Quebec, March 27, 1908.

J. O. Tremblay.

Sums Paid J. B. Cloutier.

Copied from Ledger K, Folio 387, of La Societe de Construction Permanente of Quebec.

| 1888. | | | Folio. | |
|-------|----|---------------|--------|-------|
| Feb. | 1. | To Money..... | 20 | \$25 |
| Mar. | 1. | To do..... | 29 | 25 |
| April | 2. | To do..... | 37 | 25 |
| May | 3. | To do..... | 47 | 25 |
| June | 1. | To do..... | 54 | 25 |
| July | 4. | To do..... | 64 | 25 |
| Nov. | 7. | To do..... | 101 | 25 |
| Dec. | 3. | To do..... | 109 | 25 |
| 1889. | | | | |
| Jan. | 5. | To do..... | 118 | 25 |
| Feb. | 2. | To do..... | 126 | 25 |
| Mar. | 2. | To do..... | 135 | 25 |
| | | | | \$275 |
| 1889. | | | | |
| April | 2. | To Money..... | 143 | \$25 |
| May | 1. | To do..... | 153 | 25 |
| June | 5. | To do..... | 165 | 25 |
| July | 3. | To do..... | 173 | 25 |
| Aug. | 1. | To do..... | 183 | 25 |
| Sept. | 2. | To do..... | 192 | 25 |
| Oct. | 1. | To do..... | 200 | 25 |
| Nov. | 2. | To do..... | 209 | 25 |
| Dec. | 3. | To do..... | 220 | 25 |
| 1890. | | | | |
| Jan. | 3. | To do..... | 227 | 25 |
| Feb. | 3. | To do..... | 235 | 25 |
| | | | | \$275 |
| 1890. | | | | |
| April | 1. | To Money..... | 252 | 45 |
| May | 2. | To do..... | 261 | 45 |
| June | 3. | To do..... | 273 | 45 |
| July | 5. | To do..... | 284 | 45 |

| | | | |
|-----------|---------------|-----|-------|
| August 7. | To do..... | 295 | 45 |
| Oct. 2. | To do..... | 312 | 45 |
| Nov. 10. | To do..... | 325 | 45 |
| Dec. 3. | To Money..... | 335 | 45 |
| 1891. | | | |
| Jan. 3. | To do..... | 344 | 45 |
| | | | <hr/> |
| | | | \$405 |

Certified to be correct.

ALP. COTE,

*Treasurer Societe de Construction
Permanente de Quebec.*

Quebec, March 27, 1908.

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[EXHIBIT No. 21.]

(Translation.)

CHICOUTIMI, July 20, 1890.

J. B. Cloutier, Esq., Quebec.

SIR: I have just received by the mail a notice from the Building Society that it refuses to pay the insurances on the life of my husband; it is really unfortunate to be thus tired by the Society; do they then wish to make us stop, I suppose they would like to place us so that we would be unable to pay, so as to seize our property. They do not consider that in making us discontinue paying the life insurances, that they would make us lose all that which we have given, & you who have \$1000 for guarantee if we lost that. I pray you to kindly see to it, you know how it is, they are to pay these insurances with the monies of the month of July & which you the payments that shall be made for the life will be remitted to you after the reimbursement of the money which you have already loaned us.

In these times, we need economy in view of our arrears, but not to be pushed as does the Building Society. The Building Society has nothing more to do than to take \$15 a month, the rest should be remitted to you and it is for you to make do the thing for your guarantee & for us. As regards the monies loaned, please be good enough to do that for us? By that you will put us in a position to get a good surveyorship for my husband, which would put us in a position to pay our debts.

As concerns the politics, those who say that my husband was against the candidate of the Government are mistaken that Mr. Cote had been supported by the Government, my husband was a candidate & worked for himself, from the time Mr. Cote made himself known, as being the one who had the support of the Prime Minister, then my husband withdrew from the fray & worked for Mr. Cote; for a proof of the thing, as soon as Mr. Cote shall have returned from Quebec, we shall get a certificate from his hand which we shall send you,

more than that, it seems to me that Mr. Louis Philippe Pelletier knows enough to say that Mr. Tremblay supported the Government's Candidate, it is even Mr. Tremblay who represented Mr. Cote at the

394 Polls & voted for him, if that is not sufficient to have it understood that he supported Cote, I do not know what means we should take to get there.

Henry will go & see Mr. Cote Wednesday & Saturday you will know all about that.

Your very humble servant,

(Signed)

ARTH. D. TREMBLAY.

Endorsed: C. S. 1070. Cloutier vs. Tremblay. Exhibit M. of the plaintiff. Filed June 6, 1901. G. P.—D. P. S. C.

True copy.

ALPH. BOISSONNEAULT.

Dep. P. S. C.

This is a translation of the annexed French document.

ALPHONSE REED.

[EXHIBIT No. 22.]

(Translation.)

CHICOUTIMI, August 4, 1890.

MONSIEUR: I am really sorry that you will not grant us the money which we ask of you in order to be able to put ourselves in a position to pay the arrears which we owe to the government. The inspector has put us in a very bad position; if our son had not come to Quebec we would have been able to pay almost all that was due, but alas! in what a position they have put us.

I beg you to aid us then. Take for us three hundred fifty dollars to pay everything up to June 26, we will see to the rest. Take a mortgage on our house, which the company will allow you to do after being paid what we owe them. At this time we are on
395 the way to sell a mine which ought to yield us two thousand dollars for our share and that very soon, our intention is to give back to you all that we have had from you, nevertheless, we count on nothing at present as we have already been deceived so often. I have just reproved honestly M. Cote representative, he has promised me to work for us, with all his drollery; I hope we will not have much trouble on account of his survey. Will you then aid us if you please? You will lose nothing to be sure. If you refuse us my son who is absent has charged me to write to you in order to make to you again this request, and if you do not respond to our request, to ask you to be willing to send us all the documents, which he has put in your hands, as soon as possible. He is absent for two or three days as well as his father.

Yours sincerely,

ARTH. D. TREMBLAY.

[EXHIBIT No. 23.]

CHICOUTIMI, Oct. 21, 1890.

SIR: Really we are more than troubled in view of our position. We have received a letter from the commissary of the land from having to pay our arrears to the government, if not only after the first of November as Henry's dismissal would be put before the council.

We have done our utmost but all our efforts are useless, there is no way of having money for the moment. I therefore come once more to ask advice of you, will you then help, us, I see only you who are able to do it.

The commissary has promised Henry to give work to his father as soon as he is paid; it seems to me that he can do no otherwise than to give the work demanded as soon as he is given the instructions, we will send you a letter of credit in order to reimburse
396 the sum which you will have paid for us.

Mr. Cote our representative told Henry that he was going to come the 29th of the month to Quebec and to come with him as he was going to do all in his power to help him to get work, so I do not see as the commissary refuses that. More than that Hon. Duhamel has drawn from the Court an action against us in order to prevent us the highest charges and has promised to give my husband work to pay that, at last we believe ourselves certain to have this work. Therefore be kind enough to go for us to the commissary and tell him that you are willing to help us if he is willing to give work to the father, he gives for a reason that he has no money, you can tell him that you will wait a year or two years if it is necessary, provided that you have the assurance of having a letter of credit. If it pleases you to help us and the earliest possible. I am afraid that we will lose the position. I will be able to give you our life insurance as assurance, also nine hundred fifty dollars of promissory notes from Mr. Boberge, in eight months. It seems to me sir that you don't endanger less in clearing us from the government than to let us lose the position. I hope that after reflecting that you are going to extend your hand to us. I count on you. I shall expect a telegram telling me to come or a letter at the end of the week.

I am with gratitude,

Your very humble servant,

ARTH. D. TREMBLAY.

P. S.—I have written to the first minister with respect to our position. I hope he will help us.

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[EXHIBIT No. 24.]

CHICOUTIMI, November 26, 1890.

J. B. Cloutier, Esq., Quebec.

SIR: Henry writes us telling us that you will give him some money, but that for that you demand Mr. Boberge's note as collateral surety. It seems to me that you could dispense with that introduc-

tory part as you receive already forty-five dollars a month. Nevertheless, if it is very necessary, Mr. Boberge will do it but with the condition that his notes will be made only for you, not negotiable. Really I am sorry that you did not accept them when I offered them to you at the time of my journey to Quebec. It would have been a decided thing and would have saved us many useless expenses. If you accept to give some of it in order to pay what Henry owes without notes you would do us a very great favor. That has the appearance of troubling Mr. Boberge. If you are not able otherwise, I desire that this note will be in eighteen months. We will pay the interest. We would like to have six hundred dollars, it is very necessary that Henry carry away with him two hundred dollars. You know it is very necessary for us to live. If you should give him eight hundred, that would put us easily in a position to make ourselves await a better chance which await us. Our boy is still at Quebec. I hope you will see him and give him what I ask with the shortest delay, in order that he may leave Quebec. I count on you. I wrote to Henry who must come to see us.

Respectfully,

Your very humble servant,

ARTH. D. TREMBLAY.

J. O. TREMBLAY.

398 My husband comes from Mr. Boberge's, he is not anxious to pass it. He must see monseigneur concerning this subject and will give us his decision I hope but without certainty. I pray you then give us this amount without notes, extend you hand to us. It seems to me that you already have sufficient securities. We have at hand a very certain means of money but which we can not place before the month of May. I cannot tell you but we are sure of some thousand dollars.

If you please clear the government then with note. You will not believe the service that you will render us.

A. D. TREMBLAY.

[EXHIBIT No. 25.]

CHICOUTIMI, *August 22, 1891.*

J. B. Cloutier, Esq., Quebec.

SIR: Still once more come to our aid. I hear it said that the surveyor Mr. Boivin is to replace Henry and that the latter must lose his place. You who are all powerful with Honorable Duhamel I pray then use all your power to help this poor child who through misfortune has been deceived and they have taken away from him the few hundred dollars which he ought to receive from the sale of his mine. If at least justice is not given to him, may they reinstall him in his position. This is what we are going to do. My husband is needed in several plans. Moreover our children want us to come to Quebec, my husband and I, & there they will have us live; so if Henry is reinstalled, he will remain alone at Chicoutimi, he will let the house, with the rent he will be able to continue paying the Com-

pany, and you, he will be able to give you a part of the commission while waiting that the government be paid. We will be at Quebec, be certain that you will lose nothing; more than that we will have you get the money; as soon as Henry is reinstalled we shall go to the Lake, my husband must work there, then we shall go to Quebec in order to live there. Henry will have nothing to do for us, to-day if he has got a few hundred dollars he will pay everything and as much as he can, and if his father makes something we will help him.

Therefore be kind enough to see this poor Henry who is still at the Dion Hotel and try to take him away with you to the commissioner. He is uneasy and timid, he fears reproaches from Mr. Duhamel. It is true he has been late in spending the money of the government but here, he wanted to sell the mine and in order to come to sell it he spent the money of the government with the intention of giving that back with the income of the sale. Unfortunately he has been robbed. Gracious, how terrible it is. Help us if you please. I have said enough if not too much in order that you may help us.

Your very humble servant, ARTH. D. TREMBLAY.

[EXHIBIT No. 26.]

CHICOUTIMI, August 29, 1891.

J. B. Cloutier, Esquire, Quebec.

SIR: Is it possible that you do not wish to help us? Henry, the poor child, is not the cause of the arrears which he has from the government. He has been very frank with the world but unfortunately he has been robbed of five hundred dollars, from this
400 five hundred dollars comes a loss of nine hundred dollars. The commissioner knows these things very well.

In your letter, you seemed to be very angry. Oh! no Henry does not deserve that, he is honest. If he had been dishonest, he would have stolen the partner's claims of the mine, it is what G. B. Tremblay offered him, when he knew by the plan and the permit of the partners, that the mine was not included in their permit. He offered him to put himself into the company in order to turn out the partners, and to have the mine to them only (Henry & he). Henry was not willing, knowing that the mine belongs to his father and the partners. Unfortunately it has been taken from us, in losing it we have lost nearly a thousand dollars with which we counted on paying the government and little debts. Once more, Mr. Cloutier, do not abandon us. I do not ask you to give us money, I ask that you get us again a delay of six months for the last arrear. Our children in the States offer to help us and they have the means to do it. Here, if they reinstal him in his position, and if in six months all as not paid, then they will keep the place and still, if he does not return every month, the money collected for each month at the first month, you will deprive him of his place. I pray you help us. Henry is at the Hotel, he is dying of trouble, he knows that we care without resources at our age seeing ourselves treated thus after work-

CANADA,

Province of Quebec, District of Quebec, ss:

On this twenty-fourth of September, 1885, before me, the undersigned, appeared Arthemise Dumais, wife of Jean Ovide Tremblay of Chicoutimi, personally known to me, and duly acknowledged the execution of the above instrument.

[L. s.]

H. CHARLEBORY.

N. B.—A duplicate of this Assignment should be forwarded to the Home Office of the Company, and with the same should be sent a certificate from proper authority, showing that the person before whom the acknowledgment is made is duly authorized to administer oaths.

[EXHIBIT No. 31.]

[Form No. 58.]

Relinquishment.

In the Matter of Policy No. 149,296, Issued by The Ætina Life Insurance Company of Hartford, Conn., on the Life of Mr. J. O. Tremblay.

405 The consideration for which the above Policy was assigned to the Quebec Permanent Building Society has been fully paid and satisfied, and said Society hereby relinquishes all interest in said Policy.

Dated at Quebec this 26th day of November, 1891.

A. GABOURY, *President.* [L. s.]G. GOURDEAU, *Secrétaire.* [L. s.]

Witness:

— — —

PROVINCE OF QUEBEC,

City of Quebec, ss:

On the 28th day of November, 1891, before me, the undersigned, appeared Augustus Gaboury, President & Godfroid Gourdeau, Secretary, personally known to me, and duly acknowledged the execution of the above instrument.

[L. s.]

L. P. SIROIS,
Notary Public.

N. B.—A duplicate of this instrument should be forwarded to the Home Office of the Company, and with the same should be sent a certificate from proper authority, showing that the person before whom the acknowledgment is made is duly authorized to administer oaths.

[Auditor's Report.]

ÆTNA LIFE INSURANCE COMPANY, Plaintiff in Review,

v.

PATRICK F. TREMBLAY.

Memorandum for Commission to Auditor.

The auditor is to state the account between Jean O. Tremblay and Jean B. Cloutier, as they existed at the date of the death of the said Jean O. Tremblay, January 21st, 1901, and report to the court the balance, if any, due from either to the other.

(Signed)

H. W. OAKES.

R. W. CROCKETT.

A true copy of memorandum.

Attest:

F. X. BELLEAU, *Clerk.*

STATE OF MAINE,

Androscoggin, ss:

Supreme Judicial Court, January Term, A. D. 1908.

To Hon. Franklin M. Drew, Greeting:

In the action of Ætna Life Insurance Co. v. Patrick F. Tremblay.

And on the Twenty-eighth day of the term aforesaid, the said cause being at issue, and it appearing that the trial will require an investigation of accounts, it is considered, ordered and decreed, by the court here, by consent of the parties in said cause, that you, the said Franklin M. Drew be appointed an auditor therein, and you are hereby authorized and empowered as such auditor, to hear the parties, and examine the vouchers and proof and to state the accounts in said cause, and make a report thereof to this court.

Witness, Albert R. Savage, Justice of our Said Court, at Auburn, the Twenty-sixth day of February, A. D. 1908.

F. X. BELLEAU, *Clerk.*

407 STATE OF MAINE,

Androscoggin, ss:

Supreme Judicial Court. In Equity.

ÆTNA LIFE INSURANCE COMPANY

vs.

PATRICK F. TREMBLAY and ARTHEMISE D. TREMBLAY.

To the Honorable Justice of the Supreme Judicial Court Holden at Auburn, within and for the County of Androscoggin:

In pursuance of the foregoing Commission I have heard the parties and the arguments of their counsel, and examined the vouchers and proof presented.

What ought to have been a comparatively easy task to state the account between Jean O. Tremblay and Jean B. Cloutier has been made most difficult by the absence of all books of account, the said Cloutier having refused to place his book of accounts in the custody of the Court and the said Tremblay not having kept any book of accounts. While there are in the testimony several statements of the account by Mr. Cloutier, there are no two which agree and in the statement of the bill no credit is given. But by evidence in the case it appears that on the thirty first day of August, 1888, Jean O. Tremblay by his duly authorized attorney, Cyprien Labreque, before a notary, acknowledged that he "owes yet to said Cloutier, Esquire, a balance of four hundred and seventy nine dollars on the accounts carried to the following contracts and transfers, viz:—obligation and transfer made before A. Tremblay, Notary, the sixteenth day of April, one thousand eight hundred and eighty-seven. Obligation and transfer before the said A. Tremblay, Notary, the
408 seventeenth day of May, one thousand eight hundred and eighty seven. Transfer made before C. P. Sirois, Notary, the twenty seventh day of May, one thousand eight hundred and eighty seven."

August 16th, 1889 Jean O. Tremblay, by his wife duly authorized, "acknowledged and confessed to owe well and legitimately to Jean Baptiste Cloutier * * * the sum of \$541 for a like amount loaned to the said debtor." Mrs. Tremblay says this loan was \$400 in money "actually borrowed at that time" and the balance was for "interest at 8% and a \$20 bonus and \$10 for the Notary." These two comprise the money acknowledged by Notarial acts to the due from Jean O. Tremblay to Jean G. Cloutier.

There are three orders for \$125 each on the Commissioner of Crown Lands given by the said Tremblay in favor of the said Cloutier, as follows, May 1, 1888, Sept. 29, 1888, and Feb. 3, 1889.

The defendant claims that these three orders are included in the two notarial acts; but the first order cannot be included in the first notarial act, it appears to me and I so hold, for the reason that the act specifically states that the \$479 is the balance carried to the obligation of April 16, 1887, (which was for \$294) May 17, 1887, (which was for \$240) and May 27, 1887, (which was for \$60). The three orders cannot be included in the second notarial act for \$541 for the reason that Mrs. Tremblay testifies that she actually received in money \$400 at the time of execution and that the balance was made up by interest at 8% and a bonus of \$20 and \$10 for fee of the Notary.

The deficit of \$76 and the loan of \$25 to Mrs. Tremblay are admitted by the defendants in their answer to the plaintiff's bill.

The loan to H. A. Tremblay is not allowed for the reason that it was made after his father, said Jean O. Tremblay, was out of office and before the assignment of the life policy to the said Cloutier, and when the said H. A. Tremblay was in office, having
409 succeeded his father; the recall must have been given to H. A. Tremblay in my opinion.

The charge for \$44 for expenses of Court to Robitaille and Roy is

disallowed for the reason that the bill was in no wise contracted by order or in the interest of Jean O. Tremblay.

The charge of \$10 "fees paid to Notary Duval" Aug. 16, 1889, is not allowed. I believe the fee made up a part of the \$541 as testified by Mrs. Tremblay. In the credits, I have allowed \$161 and interest for the Tremblay house sold by Cloutier. It appears that the house was sold for \$1200—\$233 more than Mr. Cloutier gave for it. He appears to have paid a fee of \$72 to Rev. Thos. Roberge for services in the sale of the house.

I have reckoned the interest to the date of the death of Jean O. Tremblay, Jan. 21, 1901.

With these explanations, I proceed to state the accounts between Jean O. Tremblay and Jean B. Cloutier as I find it, as follows:—

Jean O. Tremblay to Jean B. Cloutier.

Dr.

| | | |
|--------------|--|------------|
| 1888. | | |
| Aug. 31. | To consolidated loan, admitted by Def'ts. | \$479.00 |
| 1889. | To interest | 356.05 |
| Aug. 16. | Loan admitted by Def'ts..... | 541.00 |
| | To interest | 300.58 |
| 1888 & 1889. | Three orders for \$125 each..... | 375.00 |
| 1890. | To interest | 277.42 |
| June 16. | Deficit, admitted by Def'ts..... | 76.00 |
| 1890. | To interest | 48.32 |
| Aug. 13. | Premiums paid on life insurance ad- mitted by Def'ts..... | 774.67 |
| 410 | | |
| 1891. | Interest | 236.58 |
| Oct. 27. | Loan to Mrs. Tremblay, admitted by Def'ts | 25.00 |
| | Interest | 13.85 |
| Total | | \$3,503.47 |

Cr.

| | |
|---|------------|
| By payments by the Permanent Construction Co..... | \$955.00 |
| " Interest | 632.58 |
| " Payments by the Crown Land Office..... | 535.45 |
| " Interest | 358.94 |
| " Amount due on house sold..... | 161.00 |
| " Interest from sale, May 4, 1892..... | 44.17 |
| | <hr/> |
| | \$2,687.14 |
| Due Jean B. Cloutier..... | <hr/> |
| | \$816.33 |

I ask to be allowed \$50.00 for my services.

FRANKLIN M. DREW, *Auditor.*

Sept. 28, 1908.

Fees of Auditor as taxed, allowed and ordered paid out of the County treasury.

LESLIE C. CORNSH,
Justice Presiding.

A true copy.

Attest:

F. X. BELLEAU, *Clerk.*

411 ANDROSCOGGIN:

ÆTNA LIFE INSURANCE COMPANY, in Review,
vs.
PATRICK F. TREMBLAY.

Rescript, Whitehouse, J.

(No opinion in this case.)

Jean O. Tremblay of Quebec, father of the defendant in review, took out a policy of insurance on his life for \$2000 from the plaintiff Company payable to his wife, and subsequently with her consent, assigned the policy to Mr. Cloutier of Quebec as security for advances made and to be made for Tremblay. A few days before his death, he and his wife assigned all their interest in the policy to their son Patrick F. Tremblay of Lewiston, the defendant, subject to the rights of Cloutier under his prior assignment. Upon the death of the insured, Cloutier and the defendant each claimed the entire amount of the insurance money, the defendant insisting that there was but little due Cloutier under his assignment. Thereupon, under a law of the Province, the Insurance Company paid the amount due on the policy (\$1959.49) into the Treasury at Quebec, and as a result of proceedings commenced by Cloutier in the Superior Court of Quebec a judgment was rendered in his favor for the full amount and the Provincial Treasurer paid over the entire sum to Cloutier. The Defendant, Patrick F. Tremblay thereupon commenced an action in the Supreme Judicial Court of Androscoggin County against the Insurance Company to recover the amount of his policy under his assignment, and judgment was rendered in his favor in that suit for the full amount of the policy. See 97 Maine, 547. The Company next brought a bill in equity against this defendant to have the amount due Cloutier out of the fund ascertained and deducted from the judgment. But it was held by the court that by paying the full

412 amount of the policy to Cloutier, the Company was subrogated to all of his right to any part of the Insurance money as against any claim therefor by a subsequent assignee of the policy, that this right by subrogation was an equitable matter of defence and should have been interposed in the action at law and hence that it was not a ground for subsequent relief in equity. 101 Maine, 588.

Thereupon, pursuant to a petition of the Insurance Company a review of the action at law in Androscoggin County was granted by this Court for the sole purpose of having the amount due Cloutier out of the Insurance fund determined and deducted from the judg-

ment in that action. The writ of review having been entered in court, Hon. Franklin M. Drew was appointed auditor therein to state the account and report to the court the amount appearing to be due Cloutier. The auditor reported that the sum due Cloutier under the assignment was \$813.33. The controversy now comes to this court for the third time, on report of the evidence including the auditor's report. The auditor's report is prima facie evidence of the amount due Cloutier and is decisive unless impeached, rebutted, disproved or controlled. Rumford Falls Boom Company vs. Rumford Falls Paper Co., 96 Me. 96.

After examination of the evidence, it is the opinion of the court that the conclusion of the auditor is not shown by a preponderance of the evidence to be erroneous and it must therefore be accepted as decisive of the cause. According to section 12 of Chapter 91, R. S. "when the sum first recovered is reduced, the original defendant shall have judgment for the difference with costs on review; and if the former judgment has not been satisfied, one judgment may be set off against the other and execution be issued for the balance." In this case "the sum first recovered" was \$1959.49 with interest from April 21, 1901, and judgment was accordingly entered for \$2204.76 and costs of suit taxed at \$44.90. But the sum of \$813.33 due Cloutier should have been deducted from this sum of \$1959.49 and the original judgment should have been for \$1146.16 with interest from

413 April 21, 1901. The Insurance Company which was the original defendant and is now the plaintiff in review is accordingly entitled to have judgment for the difference, viz., \$813.33, with interest from April 21, 1901, to the date of the original judgment, and "costs of review," and if the former judgment has not been satisfied, this last named judgment shall be set off pro tanto against the "former judgment" and "execution be issued for the balance" with interest to the date of its issue.

Judgment for the plaintiff in review for \$813.33 with costs on review and interest from April 21, 1901, to the date of the original judgment.

Rec'd October 18, 1909.

414 [Endorsed:] Aetna Life Insurance Co, in Review, vs. Patrick F. Tremblay. Rescript.

415 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court.

AETNA LIFE INSURANCE COMPANY, in Review,
vs.
PATRICK F. TREMBLAY.

(Review of a Plea of Debt on a Policy of Life Insurance.)

To the Honorable Chief Justice of the Supreme Judicial Court:

And now comes the said Aetna Life Insurance Company, by its attorney, and complains that the record and proceedings had in such

cause, and also in the rendition of judgment in the above entitled cause in said Supreme Judicial Court on the ninth day of October A. D. 1909, manifest error hath happened, to the great damage of the said plaintiff in review.

Wherefore, the said plaintiff in review petitions the Honorable the Chief Justice of the Supreme Judicial Court for an order allowing the said plaintiff in review to prosecute a writ of error to the Honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order shall be made fixing the amount of security which the defendant shall give and furnish upon said writ of error; and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Dated at Lewiston, Maine, October 28th, A. D. 1909.

ÆTNA LIFE INSURANCE COMPANY,
By RALPH W. CROCKETT.

Attorney for Plaintiff in Review.

416 [Endorsed:] Copy. Ætna Life Insurance Co., — in Error
vs. Patrick F. Tremblay. Petition for Writ of Error. From
the Office of Ralph W. Crockett.

417 STATE OF MAINE:

Supreme Judicial Court.

ÆTNA LIFE INSURANCE COMPANY, in Review,

vs.

PATRICK F. TREMBLAY.

(Review of a Plea of Debt on a Policy of Life Insurance.)

Now comes the plaintiff in review in the above entitled cause, by Ralph W. Crockett, its attorney and files the following assignment of errors upon which it will rely in its prosecution of its writ of error in the above entitled cause.

I.

That the Supreme Judicial Court, sitting as a Court of Law erred in not holding a certain judgment obtained by Jean B. Cloutier against The Heirs of Jean Ovide Tremblay, Defendants, and The Ætna Life Insurance Company, the plaintiff in error, Dame Arthemise Tremblay and Patrick F. Tremblay, the defendant in review, "Mise-en-cause" in the Superior Court of Quebec, to be a bar to the original action of the said Patrick F. Tremblay, defendant in review, said judgment being as follows:

“(Translation.)

CANADA,
Province of Quebec,
District of Quebec:

In the Superior Court, the 8th Day of June, 1901.

Present: The Hon. Judge L. B. Caron.

No. 1970.

JEAN BAPTISTE CLOUTIER, of the City of Quebec, Gentleman,
Plaintiff,

vs.

418 THE HEIRS OF LATE JEAN OVIDE TREMBLAY, During His
Lifetime of the Town of Chicoutimi, Surveyor, the said
Heirs Residing at Lewiston, Me., U. S. A., Defendants.

The Aetna Life Insurance Company, of Hartford, Conn. U. S. A., and having its business office in this Province in the City of Quebec; Dame Arthemise Dumais, widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, these latter two of Lewiston, Me., U. S. A., “mise-en-cause.”

The said Patrick F. Tremblay, furthermore, one of the Defendants aforesaid, “mise-en-cause.”

The Court having examined the Procedure and the proof on record, and heard the plaintiff by his lawyers on the merit ex parte, the present case having been inscribed for proof and hearing at the same time.

Maintains the present action consequently adjudges and condemns the defendants to pay to the plaintiff the sum of \$2018.39, with interest from the 23rd of April last, and the costs. Furthermore declares that the Plaintiff as assignee of the said insurance policy on the life of the said Jean Ovide Tremblay No. 149296, issued by the Aetna Ins. Co., mise-en-cause, has a right to the amount deposited in the Treasury Department which shall be handed over to him upon presentation of the present judgment, the whole with costs against the Defendants alone.

True copy.

N. FORTIER, D. P. S. C.”

II.

That said Supreme Judicial Court, sitting as a Court of Law, erred in holding that said judgment obtained by said Jean B. Cloutier was not a bar to the original action of the said Patrick F. Tremblay, Defendant in Review.

419

III.

That said Supreme Judicial Court, sitting as a Court of Law, erred in not giving full and proper faith and credit to said judg-

ment obtained by said Jean B. Cloutier, and to the records and judicial proceedings connected therewith.

Wherefore, the plaintiff in review and plaintiff in error prays that the judgment of the said Supreme Judicial Court may be reversed.

RALPH W. CROCKETT,
*Attorney for Plaintiff in Error, Plaintiff in Review
in the Supreme Judicial Court of Maine.*

420 [Endorsed:] Copy. Ætna Life Insurance Co., in Error,
vs. Patrick F. Tremblay. Assignment of Errors. From
the Office of Ralph W. Crockett.

421 STATE OF MAINE:



Supreme Judicial Court.

ÆTNA LIFE INSURANCE COMPANY, in Review,
vs.
PATRICK F. TREMBLAY.

(Review of a Plea of Debt on a Policy of Life Insurance.)

Upon motion of Ralph W. Crockett, Esquire, Attorney for the plaintiff in review in the above entitled cause, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be and is hereby allowed, to have reviewed in the Supreme Court of the United States the Judgment heretofore entered herein, and that the amount of bond on said writ of error be and is fixed at three thousand dollars.

Dated this 29th day of October A. D. 1909.

LUCILIUS A. EMERY,
Chief Justice Supreme Judicial Court Maine.

422 [Endorsed:] Copy. Ætna Life Insurance Co., In Error,
vs. Patrick F. Tremblay. Order allowing Writ of Error.
From the Office of Ralph W. Crockett.

423 STATE OF MAINE:

Supreme Judicial Court.

ÆTNA LIFE INSURANCE COMPANY, in Review,
vs.
PATRICK F. TREMBLAY.

(Review of a Plea of Debt on a Policy of Life Insurance.)

Know all men by these presents, That the Ætna Life Insurance Company, as principal, and the Ætna Indemnity Company, as surety, both corporations duly established by law and located at

Hartford, in the State of Connecticut, are held and firmly bound unto Patrick F. Tremblay, of Lewiston in the State of Maine, in the sum of Three Thousand Dollars, to which payment well and truly to be made, said principal and surety bind themselves and each of them, jointly and severally and their successors and assigns and each of them firmly by these presents.

Sealed with their seals, and dated this twenty-ninth day of October in the year of our Lord one thousand nine hundred and nine.

The condition of this obligation is such that, whereas the above named *Ætna Life Insurance Company* has sued out a writ of error to the Supreme Court of the United States, to reverse the judgment in the above entitled cause by the Supreme Judicial Court of the State of Maine.

Now, therefore, if the above named *Ætna Life Insurance Company* shall prosecute said writ to effect and answer all costs
424 and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise it shall remain in full force and virtue.

ÆTNA LIFE INS. CO., [L. s.]

By J. L. ENGLISH, *Vice-Pres't.*

THE ÆTNA INDEMNITY CO., [L. s.]

By WILLIAM R. PENROSE,

Res. Vice-President.

Signed and sealed in presence of

F. W. BIDWELL,

D. L. BURNHAM.

Attest:

HOWARD M. PENROSE,

Ass't Secretary.

The foregoing bond and sureties are approved:

LUCILIUS A. EMERY,

Chief Justice Supreme Judicial Court of Maine.

425 [Endorsed:] Copy. *Ætna Life Insurance Co., In Error,*
vs. Patrick F. Tremblay. Bond on Writ of Error. From
the Office of Ralph W. Crockett.

426 STATE OF MAINE,

Androscoggin, ss:

I, F. X. Belleau, Clerk of the Supreme Judicial Court for said County, and legal custodian of its records and seal, hereby certify that I have carefully compared the annexed papers with the records of said Court, and that said annexed papers are a correct transcript and copy thereof in the matter relating to *Ætna Life Insurance Company, Plaintiff in Review, vs. Patrick F. Tremblay*, being a review of a plea of debt on a policy of life insurance.

In witness whereof I have hereunto set my hand and affixed the

seal of said Court, at Auburn, in said County of Androscoggin, this fifteenth day of November in the year of our Lord one thousand nine hundred and nine.

[SEAL.]

F. X. BELLEAU,

*Clerk of the Supreme Judicial Court
for the County of Androscoggin.*

STATE OF MAINE:

I, Albert R. Savage, Justice of the Supreme Judicial Court of the State of Maine, hereby certify that F. X. Belleau, Esq., whose signature is above affixed, is the Clerk of said Court for the County of Androscoggin, duly elected and qualified according to the laws of said State, that he is the legal custodian of the records and seal of said Court, for said County, that full faith and credit ought to be given to his official acts and attestations, and that the foregoing attestation is in due form of law.

In witness whereof I have hereunto subscribed my name this fifteen day of November, Anno Domini, one thousand nine hundred and nine.

ALBERT R. SAVAGE,

Justice of the Supreme Judicial Court.

427 UNITED STATES OF AMERICA, *vs.*:

The President of the United States of America to the Honorable the Justices of the Supreme Judicial Court of the State of Maine, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court of the State of Maine, before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had, in the said suit between The Ætna Life Insurance Company, a corporation duly established by law and having its principal office and place of business at Hartford, in the State of Connecticut plaintiff in review, and plaintiff in error, and Patrick F. Tremblay, of Lewiston in the State of Maine, defendant in review and defendant in error, wherein was drawn in question the validity of a statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State of Maine, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein a title, right, privilege, or immunity was claimed under the Constitution, or a treaty, or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission, or authority, a manifest error hath happened, to the great damage of the said Ætna Life Insurance Company, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the twenty-seventh day of November next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the twenty-ninth day of October, in the year of our Lord one thousand nine hundred and nine.

[Seal of the Circuit Court, Maine.]

JAMES E. DEWEY,
*Clerk Circuit Court of the United States,
District of Maine.*

Allowed by

LUCILIUS A. EMERY,
*Chief Justice of the Supreme Judicial
Court of the State of Maine.*

429 STATE OF MAINE,
Androscoggin, ss:

Supreme Judicial Court, Clerk's Office.

Service of the within writ of error in the case of *Ætna Life Insurance Company, In Error, vs. Patrick F. Tremblay* was duly made by copy on the eleventh day of November A. D. 1909.

F. X. BELLEAU,
Clerk Supreme Judicial Court.

[Endorsed:] *Ætna Life Insurance Co., In Error, vs. Patrick F. Tremblay. Writ of Error. From the Office of Ralph W. Crockett, 163 Lisbon Street, Lewiston, Maine.*

430 UNITED STATES OF AMERICA:

The President of the United States to Patrick F. Tremblay, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the twenty-seventh day of November A. D. 1909, pursuant to a writ of error filed in the Clerk's office of the Supreme Court at Washington, wherein the *Ætna Life Insurance Company*, a corporation duly established by law and having its principal office and place of business at Hartford in the State of Connecticut, is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error

mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America this 29th day of October, A. D. 1909, and of the independence of the United States the one hundred and thirty third.

LUCILIUS A. EMERY,
*Chief Justice of the Supreme Judicial
Court of the State of Maine.*

UNITED STATES OF AMERICA,
District of Maine, ss:

NOVEMBER 16, 1909.

I have this day served the within citation upon the within named Patrick F. Tremblay, at Lewiston, in said District, by delivering to him in hand a true and attested copy hereof.

WINFIELD S. HASTY,
Deputy U. S. Marshal, District of Maine.

| | |
|----------------|--------|
| Fees: Service, | \$2.00 |
| Copy, | .20 |
| Ac't exp., | 3.40 |
| | <hr/> |
| | \$5.60 |

431 [Endorsed:] Ætna Life Insurance Co., In Error, vs. Patrick F. Tremblay. Citation. From the Office of Ralph W. Crockett.

Endorsed on cover: File No. 21,915. Maine Supreme Judicial Court. Term No. 166. The Ætna Life Insurance Company, plaintiff in error, vs. Patrick F. Tremblay. Filed November 29th, 1909. File No. 21,915.

SUPREME COURT OF THE UNITED STATES

October Term, 1911.

No. 166.

ÆTNA LIFE INSURANCE COMPANY, Plaintiff in Error

vs.

PATRICK F. TREMBLAY.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

BRIEF FOR PLAINTIFF IN ERROR,

BY RALPH W. CROCKETT,

ATTORNEY FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

In 1885 the Ætna Life Insurance Company, of Hartford, Conn., Plaintiff in Error, insured Jean O. Tremblay, of the Province of Quebec, for \$2000, the policy being made payable at his death to his wife, Arthemise D. Tremblay, or in the event of her death before his, to his estate. In November, 1891, he assigned the policy to Jean B. Cloutier, of Quebec, as collateral. The policy was delivered to Cloutier at that time and it remained in his hands until Mr. Tremblay's death. Two years before this Mrs. Tremblay, the beneficiary, acting under a power of attorney from her husband had borrowed from Cloutier \$541, and had agreed to assign the policy to him as soon as a prior assignee should release its claim.

At the request of Mr. and Mrs. Tremblay, Cloutier paid the premiums on the policy from February 1891 until Mr. Tremblay's death, paying in all \$774.67. On January 14, 1901, Mr. and Mrs. Tremblay assigned the policy to their son, Patrick F. Tremblay, of Lewiston, Maine, the defendant in this suit, this latter assignment being in express terms "subject to J. B. Cloutier's claim." Another assignment, different in form but similar in effect, was made to Patrick at the same time. The first of these assignments he forwarded to the Company which acknowledged its receipt. Mr. Tremblay, Sr., died a week later. At his death there was due on the policy \$1959.49. Proofs of death were filed accompanied by the different affidavits of Cloutier and P. F. Tremblay, as assignees, and Mrs. Tremblay as beneficiary.

Cloutier claimed the entire amount due on the policy, his account aggregating \$2560.85. P. F. Tremblay claimed "all but what is excepted by assignment, being between \$500 and \$1000." Mrs. Tremblay stated that the policy "was assigned to Jean Baptiste Cloutier, of Quebec, on the 24th day of November, 1891, and said assignment is still in force. A further assignment was made in favor of P. F. Tremblay, Attorney at Law, of Lewiston, Maine, January 14, 1901."

After Mr. Tremblay's death Cloutier and Patrick were unable to agree on the amount of the former's claim and the Company, therefore, deposited the money with the Treasury Department of Quebec under what is known as the Judicial Deposit Act. In April 1901 Cloutier commenced proceedings in the Superior Court of Quebec to obtain the money, and in June was awarded judgment for the entire amount of the deposit, \$1959.49, which was shortly afterwards paid over to him, by the Provincial Treasurer. Patrick then commenced suit on the policy in the Supreme Judicial Court of Maine, as assignee. This suit was reported to the Law Court and there argued. The Law Court awarded to the plaintiff, Tremblay, the entire

amount due on the policy, \$1959.49 with interest, the Court holding that the Canadian judgment was not binding.

See opinion in *Tremblay vs. Aetna Life Ins. Co.*,
97 Maine, 547. Record pp 56-63

This opinion contains the following language:

"The record clearly shows that Mrs. Tremblay did not assign to Cloutier her whole and entire interest in the policy. It may be, however, that, although she did not join in the assignment, she had by her acts conveyed to Cloutier an equitable interest which the assignee holds in trust for his benefit and which may be enforced by proceedings in equity."

Opinion page 554.
Record page 60.

The Insurance Company then commenced a suit in equity praying for an injunction restraining Tremblay from enforcing his judgment, and asking to have the amount of the Cloutier claim determined and deducted from the judgment. This suit was reported to the Law Court and an Opinion handed down dismissing the plaintiff's bill.

See Opinion in *Aetna Life Ins. Co., In Equity vs.
Patrick F. Tremblay et al*, 101 Maine 585
Record pp 189-192

In this Opinion the Court say :

"If, as is suggested, the Cloutier claim was before the Court in the action at law, but was not considered, or, if considered, was erroneously disallowed, or if for any reason justice was not done in the action at law through accident, mistake or misfortune, and a further hearing would be just and equitable, the Company's remedy is by a petition for review, of that action."

Opinion page 590.

Record page 192.

A petition for a review of the action at law was then brought by the Company and the review granted, which opened anew the entire case.

See Mandate in *Ætna Life Ins. Co. Ptr. for Review, vs. Tremblay*. Record page 207.

A writ of review duly issued. In the original action at law of *Tremblay vs. Ætna Life Ins. Co.* the record of the Canadian judgment was introduced, also evidence on both sides relating to the amount of the Cloutier claim. The defendant Company pleaded merely the general issue, but it was agreed that all of the defendant's evidence, if admissible at all, might for the purposes of that case, be deemed admissible under the general issue.

Record page 7.

In the action of review the plaintiff in review, the Insurance Company, added to the plea of general issue a brief statement setting out four distinct defences, having had leave of court to set out in the brief statement several distinct defences and to plead double.

Record page 214.

These defences were :

1. That at the death of the insured the insurance money amounting to \$1959.49 was claimed by the plaintiff and by one Jean B. Cloutier under separate assignments. As said assignees were not able to agree upon the amount to be paid to each, the defendant company on the ninth day of April 1901, deposited said sum with the Treasury Department of the Province of Quebec under the following sections of the Revised Statutes of the said Province :—

"Article 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer.

Article 1199. In the case mentioned in the preceeding article, the Treasurer shall pay over the amount deposited to the claimant who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into Court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant."

That on the 22nd day of April, the said Cloutier commenced proceedings in the Superior Court of said Quebec, to obtain the money thus deposited and on the eighth day of June of said year said Court rendered judgment in said proceedings as follows :

(Translation.)

CANADA.

Province of Quebec.

District of Quebec.

In the Superior Court.

The 8th day of June 1901.

Present: The Hon. Judge L. B. Caron.

No. 1970.

Jeane Baptiste Cloutier, of the City of Quebec, Gentleman,

Plaintiff,

vs.

The heirs of the late Jean Ovide Tremblay, during his lifetime of the town of Chicoutimi, surveyor, the said heirs residing at Lewiston, Maine, U. S. A. Defendants.

The Ætna Life Insurance Company, of Hartford. Conn., U. S. A., and having its business office in this Province in the City of Quebec; Dame Arthemise Dumais, widow of the said Jean

Ovide Tremblay, and Patrick F. Tremblay, these latter two of Lewiston, Me., U. S. A., "mise-en-cause."

The said Patrick F. Tremblay, furthermore, one of the defendants, aforesaid, "mise-en-cause."

The Court having examined the Procedure and the proof on record, and heard the plaintiff by his lawyers, on the merit *ex parte*, the present case having been inscribed for proof and hearing at the same time.

Maintains the present action, consequently adjudges and condemns the defendants to pay to the plaintiff the sum of \$2018.39, with interest from the 23rd of April last, and the costs. Furthermore, declares that the plaintiff, as assignee of the said insurance policy on the life of the said Jean Ovide Tremblay, No. 149296, issued by the Ætna Life Insurance Company, *mise-en-cause*, has a right to the amount deposited in the Treasury Department which shall be handed over to him upon the presentation of the present judgment, the whole with costs againsts the Defendants alone.

True copy,

N. Fortier, D. P. S. C.

That on the 25th day of said June said amount of \$1959.49 was paid to said Cloutier by said Treasury Department pursuant to said judgment.

That said judgment is a bar to this action.

2. And the defendant further says by way of brief statement that the proceeds of the policy declared upon in the plaintiff's writ were at the death of said insured claimed by said Cloutier under said collateral assignment executed in his favor on November 24, 1891. Said Cloutier having been awarded the entire proceeds of said policy by the Superior Court of the Province of Quebec, the money being paid over to him on June 25th, 1901, by the treasurer of said Province in pursuance of the order of said Court, the defendant company then became subrogated to the right of said Cloutier to said insurance money

or any part thereof and now interposes that right against the claims of the plaintiff in this action, as an equitable defence thereto.

3. And the defendant further says by way of brief statement that the plaintiff cannot recover in this action because said action is brought in the name of the assignee, neither of his assignments having been assented to by the defendant.

4. And the defendant further says by way of brief statement that the plaintiff cannot recover in this action because the assignments mentioned in the plaintiff's declaration are of a part of an entire sum.

Record pp 212-213

The Supreme Judicial Court of Maine in passing upon the report of the evidence in the action of review again failed to give due weight to the Canadian judgment and rendered its decision notwithstanding that judgment.

See Rescript. Record pp 262-3

It is with the validity and effect of the judgment rendered by the Superior Court of Quebec that we have to deal in this case.

ASSIGNMENT OF ERRORS

The errors relied upon by the plaintiff in error are as follows:—

1.

That the Supreme Judicial Court, sitting as a Court of Law erred in not holding a certain judgment obtained by Jean B. Cloutier against the heirs of Jean Ovide Tremblay, Defendants, and the Aetna Life Insurance Company, the plaintiff in error, Dame Arthemise Tremblay and Patrick F. Tremblay, the defendant in review, "Mise-en-cause" in the Superior Court of

Quebec, to be a bar to the original action of the said Patrick F. Tremblay, defendant in review, said judgment being as follows:—

(Translation)

Canada.

Province of Quebec.

District of Quebec.

In the Superior Court.

The 8th day of June, 1901

Present : The Hon. Judge L. B. Caron.

No. 1970.

Jean Baptiste Cloutier, of the City of Quebec, gentleman,

Plaintiff,

vs.

The heirs of late Jean Ovide Tremblay, during his lifetime of the town of Chicoutimi, surveyor, the said heirs residing at Lewiston, Me., U. S. A., Defendants.

The Ætna Life Insurance Company, of Hartford, Conn., U. S. A., and having its business office in this Province in the City of Quebec; Dame Arthemise Dumais, widow of the said Jean Ovide Tremblay, and Patrick F. Tremblay, these latter two of Lewiston, Me., U. S. A., "mise-en-cause."

The said Patrick F. Tremblay, furthermore, one of the defendants aforesaid, "mise-en-cause."

The Court having examined the Procedure and the proof on record, and heard the plaintiff by his lawyers on the merit ex parte, the present case having been inscribed for proof and hearing at the same time.

Maintains the present action consequently adjudges and condemns the defendants to pay to the plaintiff the sum of \$2,018.39 with interest from the 23rd day of April last, and the costs. Furthermore, declares that the plaintiff as assignee of the said

insurance policy on the life of the said Jean Ovide Tremblay No. 149296, issued by the Ætna Life Insurance Co., mise-en-cause, has a right to the amount deposited in the Treasury Department which shall be handed over to him upon presentation of the present judgment, the whole with costs against the defendants alone.

True Copy,

N. Fortier, D. P. S. C.

II

That said Supreme Judicial Court, sitting as a Court of Law erred in holding that said judgment obtained by said Jean B. Cloutier was not a bar to the original action of the said Patrick F. Tremblay, Defendant in Review,

III

That said Supreme Judicial Court, sitting as a Court of Law erred in not giving full and proper faith and credit to said judgment obtained by said Jean B. Cloutier, and to the records and judicial proceedings connected therewith.

Record pp 264-266

When the insurance company found that the rival claimants, Tremblay and Cloutier, could not agree as to the amount due the latter, it deposited the amount due under the policy with the Treasurer of the Province of Quebec under Articles 1198-1199 of the Revised Statutes of the Province.

See Record pp 115-116

This deposit was made April 9, 1901, (Record page 39) and due notice given to Cloutier, Tremblay and the latter's attorney.

Record page 40

On April 22, 1901, Cloutier commenced proceedings in the Superior Court of Quebec to obtain the money thus deposited. The record of these proceedings appears in full (Record pp 102 to 115) and includes the declaration, summary procedure, return, order of notice, default, proofs and judgment. By the terms of the judgment the entire amount of the deposit was awarded to Cloutier and the money paid over to him by the Provincial Treasurer.

It is admitted that the deposit was made and that all claimants had notice.

Record page 28

No question is raised as to the identity of the subject matter in the Quebec suit and the suit in Maine, nor as to the identity of the parties.

Record page 28

It is admitted that the Quebec suit was a proper procedure under the Laws of Canada; that notice was published in accordance with the order of Court, and that the Court in which judgment was rendered was a court of competent jurisdiction of the subject matter of the suit.

Record page 29

Much of the evidence in the action of review was not in the case as originally reported in *Tremblay vs. Aetna Life Insurance Co.* 97 Maine, 547. This additional evidence is mainly the deposition of Hon. Norman W. Trenholme, Attorney for the Insurance Company at the time of the Judicial Deposit and the Quebec suit, and now Judge of the Superior Court of Canada, (Record page 138), the deposition of Hon. Amedee Robitaille, Attorney for Cloutier, and afterwards Secretary of the Province of Quebec, (Record page 125), the deposition of Frank W. Bidwell, head of the Death Claims Department of the Company, at Hartford, Connecticut, (Record page 143), and the deposition

of Camille Guay, the Quebec Agent of the Company (Record page 127).

The testimony of these deponents is remarkably clear and comprehensive, and shows conclusively that all steps necessary to obtain a valid judgment were duly taken, and that by the laws of Quebec, the deposit and judgment were a complete bar to any proceedings against the Company and a complete and perfect discharge.

In the opinion of the Court in *Tremblay vs. Aetna Life Insurance Co.* 97 Me., 547, it is intimated that the Insurance Company did not use good faith in the Quebec proceedings. These depositions, taken since that opinion was written, clearly show that the utmost good faith was used. In fact, there is no evidence in any part of the case to warrant the intimation on the part of the Supreme Judicial Court of Maine that the Company did not throughout the entire proceedings act honestly and in good faith.

Where a life insurance policy is issued by a Company of one State to one domiciled in another State, and the insured assigns the policy in the latter State, the law of the place where the assignment was executed shall govern.

Coburn's Appeal, 74 Conn. 463.

Lee vs. Abdy, 17 Q. B. D. 309

Union Cen. Life Ins. Co. vs. Woods, 11 Ind. Ap. 335

Mutual Life Ins. Co. vs. Allen, 138 Mass. 24.

Miller vs. Campbell, 140 N. Y. 457.

Spencer vs. Myers, 150 N. Y. 269.

Mut. Ben. Life Ins. Co. vs. Bank, 68 Mich. 116

19 Am. & Eng. Ency. of Law (2nd. Ed) 90

This judgment is a valid and binding judgment in the Province of Quebec and by the decisions of this Court is valid and binding upon our Courts.

It comes within the principles laid down in *Hilton et al vs. Guyot et al* 159 U. S. 113, and *Ritchie vs. McMullen et al* 159

U. S. 235. In *Hilton vs. Guyot*, the Court held that a judgment rendered in France or in any other foreign country, by the laws of which judgments rendered in the United States are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in the United States, but are prima facie evidence only of the justice of the plaintiff's claim. This is on the theory and doctrine of comity and reciprocity.

In *Ritchie vs. McMullen*, on the same doctrine of comity and reciprocity, the Court held a judgment rendered by the Queen's bench division of the high court of justice of the Province of Ontario to be conclusive and binding upon our courts.

By the Law of England, prevailing in Canada, a judgment rendered by an American Court under like circumstances would be allowed full and conclusive effect, while by the law of France, settled by a series of uniform decisions of the Court of Cassation, the highest Judicial Tribunal, no foreign judgment can be rendered executory in France without a review of the judgment including the whole merits of the cause of action on which the judgment rests.

The judgment set up by the Ætna Life Insurance Company in answer to the suit of Patrick F. Tremblay is a judgment rendered by a court of competent jurisdiction in the Province of Quebec. No question is raised as to the identity of the subject matter in the Quebec and Maine suits nor as to the identity of the parties. It was rendered in accordance with the laws and practice of Quebec. All parties were duly notified and cited to appear. There is no flaw in the record.

FEDERAL QUESTION.

The Federal question was raised in the original suit of *Tremblay vs. Ætna Life Insurance Co.*, 97 Maine 547.

The defendant Company introduced evidence of the Canadian Judgment [Record pp 41-55]. The plea was the general issue, with the agreement that all of the defendant's evidence, if ad-

missible at all, might for the purpose of that case, be deemed admissible under the general issue.

(Record page 7.)

In the suit in Equity—*Ætna Life Insurance Co, vs. Tremblay*, 101 Maine 585, the Court referring to the former case say on page 589, "Further, the action at law was reported upon the evidence without any limitation of the Court to the pleadings, and hence the Law Court could have given effect to any matter of defence disclosed by the evidence, even if not pleaded.

Record page 191.

Again the credit to be given to the Canadian judgment is discussed at length in the opinion of the Court in the first case, *Tremblay vs. Ætna Life Ins. Co.* 97 Maine, pp 554-8.

Record pp 60-63

The federal right was denied by the Supreme Judicial Court of Maine. The federal question was erroneously decided. And the judgment of the State Court was not founded upon any other matter broad enough to sustain the judgment. The federal question involved and erroneously decided is in itself decisive of the case, there being no other issue involved sufficient of itself to maintain the judgment.

See *Taylor Juris. & Pro. U. S. Supreme Court*, Page 434

As the Court say in *Hilton vs. Guyot*, the most certain guide for the decision of questions of private international law is a treaty, or a statute of this country. But where there is no treaty nor statute, the duty still rests upon the judicial tribunals to determine what the rights of parties are under what is known as "the comity of nations." *Hilton vs. Guyot*, at 163.

"Comity" in the legal sense is defined as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Hilton vs. Guyot*, at pp 163-4.

"The effect to be given to foreign judgments is altogether a matter of comity in cases where it is not regulated by treaty."

2, *Kent's Comm.* [6th Ed.] 120.

Hilton vs. Guyot, 159 U. S. at 166.

Mr. Justice Cooley in *McEwan vs. Zimmer*, 38 Mich. 765-769 says:

"True comity is equality. We should demand nothing more and concede nothing less."

"If a civilized nation seeks to have the sentence of its own courts of any validity elsewhere, they ought to have a just regard to the rights and usages of other civilized nations, and the principles of public and national law in the administration of Justice."

Bradstreet vs. Insurance Co. 3 Summ, 600, 608.

Hilton vs. Guyot, at 213.

In recent times, foreign judgments rendered within the dominions of the English Crown, and under the law of England, after a trial on the merits, and no want of jurisdiction and no fraud or mistake being shown or offered to be shown, have been treated as conclusive by the highest courts of New York, Maine and Illinois.

Hilton vs. Guyot, at 195.

The Court in *Hilton vs. Guyot* draw the following conclusions of law:

"In view of all the authorities upon the subject, and of the trend of judicial opinion in this Country and in England, follow-

ing the lead of Kent and Story, we are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the Court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact. The defendants, therefore, cannot be permitted, upon that general ground, to contest the validity or the effect of the judgment sued on."

Hilton vs. Guyot, at pp 202-203.

The Canadian judgment in this case is pleaded in bar, and there is a marked distinction between judgments as a cause of action and as a plea in bar. A foreign judgment when brought forward as a cause of action may be only *prima facie*, but conclusive when called into question incidentally or by a plea in bar.

Walker vs. Witter, 1 Doug. 1.

Buttrick vs. Allen, 8 Mass. 237.

Galbraith vs. Neville, 5 East. 75.

Wood vs. Gamble, 11 Cush. 8.

Williams vs. Preston, 3 J.J.M. 600.

Bigelow on Estoppel, p. 192.

See *Freeman on Judgments*, 2nd, Ed. Sec. 592.

The Canadian Judgment is in the nature of a judgment in rem. And the Court in *Hilton vs. Guyot* intimates that such judgments are conclusive under conditions where it might be held otherwise with regard to judgments in personam.

FRAUD.

There was no fraud on the part of the Insurance Company in any of the proceedings connected with the Quebec judgment. It made the Judicial Deposit in accordance with the provisions of the Statutes of the Province, and gave proper notice to all claimants. It made no further move and from that time held itself aloof. It took no part in the contest for the fund, and cared not to whom the fund should be awarded. Either claimant, Cloutier or Tremblay, or both, were free to commence proceedings to obtain it. The Company had done all it was called upon to do. The matter was out of its hands. It had acted in good faith and according to law. And there is not a word in the entire record of the case to show that anything but the best of faith was used by it from beginning to end. On the contrary, the evidence clearly shows good faith in every particular.

Nor was there fraud on the part of Cloutier in obtaining the judgment. He commenced proceedings in due form through his attorney, who was Secretary of Province of Quebec. Every step was taken in conformity with the laws and practice of Quebec. There was the declaration containing a statement of the case, the summary procedure, the return, the order of notice and the default. Even after the default the evidence was taken out in full and reduced to writing. The Court then, with full knowledge of the case and of the facts awarded judgment to Cloutier for the full amount of the deposit, and upon presentation of the certificate of the Court, the Treasurer of the Province paid over the money to Cloutier.

The granting of the writ of review by the Supreme Judicial Court of Maine opened the case *de novo* and that Court could thereafter have reversed its former decision denying the validity of the Canadian judgment, but it failed to do so, although the entire matter was before it.

Respectfully submitted,

RALPH W. CROCKETT,

Attorney for Plaintiff in Error.

JAN 9 1912

JAMES H. MCKENNEY

IN THE
Supreme Court of the United States
October Term 1911

No. 134

The American Life Insurance Company
Petitioner for Certiorari

Respondent

WILLIAM F. DUFFY, JR.

Attorney for Respondent

IN THE
Supreme Court of the United States

OCTOBER TERM, 1911.

No. 166.

THE AETNA LIFE INSURANCE COMPANY,
Plaintiff in Error,

VS.

PATRICK F. TREMBLAY.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This is a writ of error to the Supreme Court of the State of Maine, upon a writ of review brought by the plaintiff in error, the Aetna Life Insurance Company vs. the defendant in error, Patrick F. Tremblay.

In the writ of review, said Company sought to reverse the judgment of the Supreme Court of the

State of Maine, upon an action brought by the said Tremblay against the said Company on it's policy of insurance, issued on the life of the father of said Tremblay and payable to his wife, Arthemise D. Tremblay.

The errors assigned are:—

1. The refusal of the court to hold a certain judgment obtained by Jean B. Cloutier in the Superior Court of Quebec to be a bar to the original action of Patrick F. Tremblay against the said company;

2. In holding that said judgment was not a bar to said original action;

3. That said court erred in not giving full and proper faith and credit to said judgment and to the records and judicial proceedings connected therewith.

The policy was issued August 13, 1885. On November 24, 1891, it was assigned by the assured, without the joinder of his wife the beneficiary, to J. B. Cloutier, as collateral security. On Jan. 14, 1901, it was assigned by the assured and by his wife, the beneficiary, to the said Patrick F. Tremblay, the defendant in error. The assured died January 21, 1901, and at his death, there was due on the policy \$1959. 49.

No notice of the assignment to Cloutier was given to the Company until after the second assignment was made. The second assignment contained a clause, making it subject to J. B. Cloutier's claim, and the company was duly notified of this assignment, receiving notice of the existence of the Cloutier claim through this assignment.

No assent to the assignment of Cloutier was given by the company prior to the death of the assured. Both assignees notified the company of their claims, but did not agree as to the amount due Cloutier. Thereupon, April 19, 1901, the company deposited the amount admitted to be due on the policy, \$1959.49, with the Provincial Treasurer of Quebec, to be held under the following statute:

"Article 1198. Whenever any person desires to pay any sum of money which is demanded of him by contending claimants, he may deposit the money he so desires to pay, in the office of the Provincial Treasurer

Article 1199. In the case mentioned in the preceding article, the Treasurer shall pay over the amount deposited to the claimant, who shall produce and file an authentic copy of a competent judgment entitling him to the money, saving the right of the depositor, if the deposit receipt has not been registered, and if the money has not been paid into the court as a tender, to withdraw his deposit before the same shall have been demanded by the claimant."

April 22, 1901, Cloutier commenced proceedings to secure the money thus deposited, in the Superior Court of Quebec against the heirs of J. O. Tremblay, defendants, and Dame Arthemise D. Tremblay, the Insurance Company and Patrick F. Tremblay, each as *mise-en-cause*, service on all being made by publication.

In his petition, Cloutier claimed title to the insurance money by reason of his assignment, which he alleged to have been made to him by the as-

sured and beneficiary, although as a matter of fact the assignment was not signed by the beneficiary, p. 32.

None of the parties named by Cloutier in his bill appeared and the defendant in error Patrick F. Tremblay, a resident of Auburn, Maine, brought his suit in Maine, in the Supreme Judicial Court for the County of Androscoggin, May 22, 1901, against the Insurance Company for the amount due on the policy.

Notwithstanding this action, the company took no steps to withdraw its deposit. Cloutier obtained judgment by default June 8, 1901, and on the twenty-ninth day of June, 1901, the deposit was paid to Cloutier by the provincial treasurer.

To the suit of the said Patrick F. Tremblay, the company interposed four defences, which were fully considered by the Court, all of which are in various records, shown in the printed case, and are fully stated and considered in the opinion, p. 56. The court gave judgment in favor of the defendant in error, for the full amount of the policy, May 22, 1903, p. 173.

Thereupon July 24, 1903, the company brought its bill in equity to stay judgment, p. 172, on which the Court rendered opinion September 17, 1906, dismissing the bill, page 189.

December 1, 1906, said company filed a petition for review. A writ was granted and June 18, 1909, a rescript was sent down, ordering judgment for the plaintiff in review for \$818.33 and interest, p. 262. The effect of this was to allow the judgment for this amount to be set off against the

original judgment obtained by Patrick F. Tremblay against the insurance company.

The claim which the plaintiff in error presents to this court is in substance, that the judgment of the Supreme Court of the State of Maine is erroneous in not allowing the judgment of the Court of Quebec as a set-off or defense to the entire claim instead of allowing as it did, the amount actually due Jean B. Cloutier, as equitable assignee of the policy for his advances to the original holder of the policy, giving them the benefit of its payments to him to this extent.

THE LAW

The assignment of errors sets out nothing to give this court jurisdiction under the Judiciary Act. Section 709 of the Statutes of the United States. No question is raised as to any federal statute, or any right under a treaty, nor is any right, privilege, or immunity claimed under the provisions of the Constitution of the United States, either by direct averment or by necessary intendment from the record.

If it is argued that the obligation of contracts has been impaired, the argument in no way appears to be based upon the obligation of any state statute contrary to the rights declared by the Constitution or Laws of the United States.

No authority to review the judgment of a state court exists because it refuses to give effect to valid contracts, or because in its effect it impairs the obligation of a contract.

It must be the Constitution or the Statute of the state which impairs the obligation of a contract, or the case does not come within the jurisdiction of this court.

Sayward vs. Denny, 158 U. S. 180.

Railroad Company vs. Rock, 4 Wallace, 481.

Knox vs. Exchange Bank, 12 Wallace, 379.

Railroad Company vs. McClure, 10
Wallace, 511.

Railroad Company vs. Lovering, 12
Wallace, 384.

Chouteau vs. Maffitt, 111 U. S. 200.

Lehigh vs. Borough of Easton, 121
U. S. 388.

The scope of the power of this court is briefly stated in Lehigh vs. Borough of Easton, 121 U. S., 388.

"The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which in our opinion is valid; it may adjudge a contract to be valid which in our opinion is void; or its interpretation of the contract may in our opinion be radically wrong; but in neither of such cases would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the State Constitution, or some legislative enactment of the State, which is claimed by the

unsuccessful party to impair the obligation of the particular contract in question."

Parmalee vs. Lawrence, 11 Wallace, 36.

McManus vs. O'Sullivan, 1 Otto, 578.

Chouteau vs. Maffitt, 111 U. S., 200.

But even had this court jurisdiction, it seems to us manifest that the decision of the court of Maine could not be successfully attacked on its merits.

It was clearly within the power of the State Court to decide as to the validity of the foreign judgment.

Judgments of a foreign state are *prima facie* only.

Hilton vs. Guyot, 159 U. S. 113, p. 180, 181, 182.

This was the ground upon which the Court of Maine proceeded in its decision in this matter.

Tremblay vs. Aetna, 97 Maine, 547, and cases cited.

Tremblay vs. Aetna, 101 Maine, 585.

Having power to inquire into the validity of the foreign judgment, the Court did so, and decided against it on several grounds as stated in its opinion:

1. That the assignment to Cloutier was insufficient, lacking the signature of the beneficiary, to be the basis of a suit at law.

2. That it was based upon a false allegation in the complaint that the assignment to Cloutier was signed by the beneficiary, an allegation which was not sustained by the proof, on the contrary, being distinctly negatived.

3. Failure to acquire jurisdiction.

4. Probable collusion of the Company to allow the case to proceed to judgment. See opinion in printed case, p. 56, and Tremblay vs. Aetna, 97 Maine, 547.

The opinions of the state court are now a part of the record and under the existing rule may be referred to to ascertain the grounds of the decision.

Sayward vs. Denny, 158 U. S., 180.

The strongest claim apparently which can be urged on the part of the plaintiff in error is that the Canadian judgment was a judgment *in rem*, and that payment of the deposit upon the judgment was a protection to the company against an action by the defendant in error for the same funds, but here again the condition remains unchanged.

A foreign judgment, even *in rem*, is open to inquiry with respect to its original validity, both as to the question whether the subject of the judgment, the property or right upon which it undertook to act, was within the jurisdiction of the court, and also whether the judgment was obtained by fraud on the part of the plaintiff, or by fraud or collusion on the part of the party undertaking to set up the judgment as a defence.

It is illustrated by the decisions in respect to garnishee process, which, holding to the general principal that the judgment of a foreign court and payment under the judgment is a protection to the alleged garnishee, nevertheless hold that such judgments are open to inquiry, and if, for example, it appears that facts within the knowledge of the garnishee, which, if disclosed, would have been

sufficient to have prevented such judgment, were not disclosed, it would authorize the court to refuse to hold it a bar to a subsequent suit against the garnishee.

Wilkinson vs. Hall, 6 Gray (Mass) 568

Eddy vs. O'Hare, 132 Mass. 56

Whipple vs. Robinson, 97 Mass., 107

Wardle vs. Briggs, 131 Mass. 518

As appears from the opinion, these very questions were considered, including the question whether, under the laws of Maine, the Canadian judgment was actually a judgment *in rem* so far as the rights of Patrick F. Tremblay, the defendant in error, were concerned.

The court of Maine properly inquired into these questions, and after full hearing decided them adversely to the plaintiff in error.

While the evidence appears to justify fully the conclusions reached by the court of Maine, it is immaterial in the present case whether they were justified or not.

The questions were fully within the province of the court to decide, and under the cases already cited, their decision cannot be revised by this process.

WILLIAM FRYE WHITE

HENRY W. OAKES.